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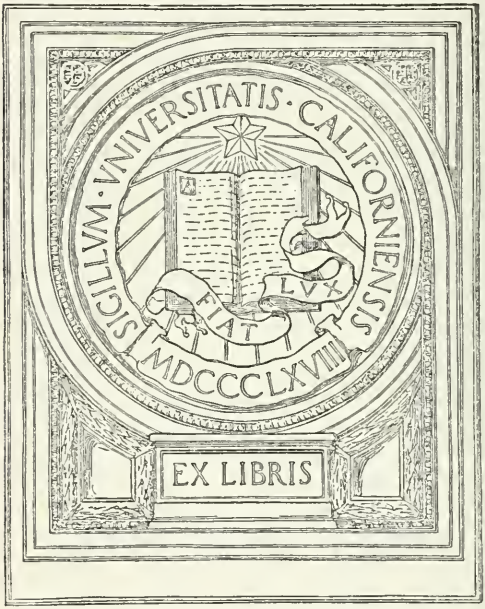

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METHODS
OF
INDUSTRIAL PEACE

BY

NICHOLAS PAINE GILMAN

Great economic and social forces flow with a tidal sweep over communities that are only half conscious of that which is befalling them. Wise statesmen are those who foresee what time is thus bringing, and endeavor to shape institutions and to mould men's thought and purpose in accordance with the change that is silently surrounding them. — JOHN MORLEY

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TO

THEODORE ROOSEVELT

PRESIDENT OF THE UNITED STATES

IN ADMIRATION

OF HIS

MAINTENANCE OF AMERICAN PRINCIPLES

IN LABOR MATTERS

GIFT OF MRS. A. F. MORRISON MAR 27 '43

432357

If experience has established any one thing in this world, it has established this: that it is well for any great class or description of men in society to be able to say for itself what it wants, and not to have other classes, the so-called educated and intelligent classes, acting for it as its proctors, and supposed to understand its wants and provide for them. They do not really understand its wants, they do not really provide for them. A class of men may often itself not either fully understand its own wants, or adequately express them; but it has a nearer interest and a more sure diligence in the matter than any of its proctors, and therefore a better chance of success.

Matthew Arnold.

It is an infamous thing in our American life, and fundamentally treacherous to our institutions, to apply to any man any test save that of his personal worth, or to draw between two sets of men any distinction save the distinction of conduct, the distinction that marks off those who do well and wisely from those who do ill and foolishly. There are good citizens and bad citizens in every class as in every locality, and the attitude of decent people toward great public and social questions should be determined, not by the accidental questions of employment or locality, but by those deep-set principles which represent the innermost souls of men. A healthy republican government must rest upon individuals, not upon classes or sections. As soon as it becomes government by a class or by a section, it departs from the old American ideal.

Theodore Roosevelt.

PREFACE

THERE is a surprising lack of books in the English language on the vital matter of industrial peace. Four or five small volumes, the latest now ten years old, exhaust the list. I have embraced the opportunity thus offered to treat the subject more comprehensively than has yet been done, and to bring the treatment down to the present year. Discussions of such matters have been rendered more profitable by the recent introduction of the term "collective bargaining" and by the discrimination of "mediation," "conciliation," and "arbitration" as peace-processes. The last ten years have witnessed the so-far successful trial by New Zealand of the method of legal regulation of labor disputes commonly but inaccurately known as "compulsory arbitration." I have not found space for a full exposition of the working of this remarkable legislation, which has not yet received from economists the consideration due to its great importance. But I have given the substance of the existing law, a number of judgments on its record made by able foreign observers, and a brief statement of the argument for the system. The time has not yet come to pronounce definitely upon it. If in the next few years it weathers a crisis, it will have a clear title to be called a

complete success. The adoption of the policy by two Australian commonwealths has extended the area of experimentation, and will make a scientific estimate of its merits and demerits easier and more trustworthy. Countries like the United States, where the system of legal regulation of labor disputes is not yet well known or entirely understood, should meanwhile consider with care the fundamental question of the relations of law and industry in the light of this recent experience. There is plainly a growing sentiment among English-speaking people that labor disputes should in some measure be brought within the field of law, and no longer continue anomalous and lawless: that trade-unions and employers should not be allowed to fight out their quarrels, whatsoever the injury to the public may be. The time is ripe for emphatic assertion of the rights of the public. The adjustment of labor difficulties should be left primarily in the hands of the employer and the trade-union. But if they will not settle them speedily and peaceably, then the public must and will find a more effectual way.

My object in this volume being not history, but exposition, numerous labor questions have been touched upon but briefly. I have confined my view mainly to feasible methods of establishing industrial peace, which have had actual trial and proved success. My previous volumes, on "Profit Sharing" and "A Dividend to Labor," have freed me from the necessity of devoting any space to the methods therein advo-

cated, in which I retain my faith, while here considering the more specific problem of the prevention of strikes and lockouts under the usual wages contract.

The nineteen volumes of the Report of the United States Industrial Commission are a storehouse of information and opinion upon which I have freely drawn. My obligations are especially great to Messrs. Charles E. Edgerton and E. Dana Durand, the experts who compiled the larger part of volume xvii. No writer touching on trade-unions can fail to acknowledge his debt to Sidney and Beatrice Webb's admirable volumes, "The History of Trade-Unionism" and "Industrial Democracy." Mr. W. P. Reeves' two volumes on "State Experiments in Australia and New Zealand" furnish altogether the best short account of the conciliation and arbitration laws of those countries. I am indebted to Mr. Reeves, to Mr. Edward Tregear, the New Zealand commissioner for labor, to the Hon. B. R. Wise, of New South Wales, and to the labor offices of several Australian colonies, for documents and specific information; to the boards of arbitration of various American States for sets of their reports; to Mr. H. Llewellyn Smith, commissioner of labor for the United Kingdom, for many courtesies; to Mr. E. F. Du Brul, commissioner of the National Metal Trades Association, and to Mr. Herman Justi, commissioner of the Illinois Coal Operators Association, and to numerous other correspondents in England and America. My particular thanks

are due to Hon. Carroll D. Wright, who has read the proofs of the entire work, and to Professor John B. Clark, who has read those of the last four chapters.

A considerable portion of the matter of this volume formed the substance of four lectures recently given before the Meadville Theological School, on the Adin Ballou foundation. It is a pleasure thus to associate a discussion of industrial harmony with the name of so devoted and broadly humane an advocate of peace as Adin Ballou.

I trust that this work will have some effect in clearing the minds of those who hereafter discuss industrial peace, and in assisting the practice of those who have the task laid upon them of settling labor disputes.

N. P. G.

MEADVILLE, PENN., March 21, 1904.

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METHODS OF INDUSTRIAL PEACE

CHAPTER I

ASSOCIATION IN MODERN INDUSTRY

THE object of this work is to aid in the better comprehension and the wider diffusion of the principles and the methods of industrial peace. Let us first consider the matter in a general way. By "industrial peace" we are to understand the condition of things in which the ordinary processes of industrial production go on regularly and quietly. Production is then as fruitful as possible in the given state of the arts and sciences. The rate and the amount of production gradually advance, since the whole process is wide open to new inventions of labor-saving machinery which lower the first cost of the articles made, and thus lead to a larger consumption. Under such conditions the employer realizes a ratio of profit which is sufficient to keep able men in the business; he receives "wages of superintendence," so-called, and dividends on the capital invested, commensurate with the risk taken and the exertion and talent required. The workman receives, as a matter of course, wages high enough to procure for himself and his family the necessities of life at all times, and a good share also of the comforts of life in prosperous times. The standard of the workman's comfort steadily rises under civilization as time goes on, and

invention increases the purchasing power of his money wage.

Peace, then, reigns in industry, as between nations, when the two parties are for the time being fairly well satisfied with the *status quo* — the main matter in which is the division of the industrial product into the employer's profit and the employee's wages. Peace continues when any changes proposed by the employer to the employee which look to the diminution of wages or the increase of the length of the working day, for instance, are accepted at once by the workmen, or are modified by friendly negotiation, so that there is no rupture of the usual kindly relations. We have peace, again, when proposals made by the employee to the employer which involve higher wages or fewer hours are received with respect, and made the subject of immediate assent, or of amicable consideration. Industrial peace is the normal condition of economic production when all the factors work together harmoniously; "industrial war" is the abnormal condition which interrupts the usual friendly and fruitful processes of such natural coöperation.

In the industrial world we have the analogy of war with sword and gun when proposals and rules made and insisted upon by one party to an industrial contract are not accepted by the other party. Whatever the particular point may be on which the rules or proposals turn, or from whichever side they come, even if they are considered "unfair" by the other side and consequently rejected, it is, of course, feasible for the work of production to go on for a season as before, under the previous conditions, — the time not being judged auspicious for a struggle. But if the party proposing

the novelty considers the conditions favorable for a fight to the finish and refuses to coöperate unless the new terms are accepted, we have the likeness in the industrial world of "strained relations" between countries. The ordinary strike and lockout, with the threatening and abusive language which they generally bring on, are at first mainly a war of words, and they correspond to a withdrawal of diplomatic intercourse between two nations. This war of words breaks no bones, however, although it may be very effectual in stirring up hatred between the parties.

If the suggestion of conciliation or arbitration, made by one party, is declined by the other, and also any similar suggestion by a third party, we then have something much like a declaration of war between the two nations, the suggestion or the actual proffer of friendly mediation from another country having been refused. Mediation being repelled by one party or by both, the tendency is to acts which forcibly declare the feelings of the two parties, these naturally becoming more and more virulent. The trade-union is then apt to show the militant character of its organization; threats often change into deeds of violence; peaceful "picketing" becomes injurious assault upon non-unionists seeking to fill the places of the strikers, and they may be wounded or even killed; and their houses fired or blown up with dynamite. Whether these outrages are committed by strikers or by their sympathizers among the dangerous classes, every weapon of abuse or violence is brought into play, covertly or openly, and the union does little or nothing to sheathe them. The works of the employer are beset by an angry crowd in the effort to keep non-unionists from entering, and

a state of siege is practically declared. The employer erects a stockade around the works, and shelters and provisions there a force of workmen protected by private troops armed with rifles and revolvers. The works are destroyed, in whole or in part, by the efforts of the besiegers. Many persons not directly concerned are boycotted by the strikers, or are locked out by the employers, in the endeavor to embroil the whole community in the dispute, just as two nations may endeavor to bring about a general European war in support of their conflict with each other. The peace and order of the whole city are deranged during a great strike. A lawless mob threatens to bring about entire anarchy. After the police have ineffectually done all that they can under the orders of a timid mayor, and the irresolute sheriff has called out the *posse comitatus* in vain, at last the governor of the State, or even the President of the United States, is called upon to send troops, and then we have war not at all by way of analogy, but in bitter earnest and in full severity, as at Homestead in 1892 and at Chicago in 1894. This warfare can have only one termination in a civilized country where law is thoroughly enforced. Whether the strike goes as far as this open warfare or not, we often have the spirit of war between the two parties, — the hell of its passions, if not of its actions.

Such lamentable events as these occur, very plainly, because of the combination of workingmen in large numbers. If there were no trade-union in a particular town, and an extreme dissatisfaction with the conditions of their labor pervaded the body of workingmen in a certain factory, one workman after another might walk out, laying down his tools because of his discon-

tent, but having no concert of action with his fellows. Then no such results as we have just enumerated would probably ensue. "A strike in detail" of this kind would be an expression of the "social mind" of the body of workmen; but, without a definite agreement between them, there would be nothing to remind us of organized war. Guerilla skirmishes there might be, but they would be strictly individual or small-group matters. Anything properly to be called war implies organization on the part of the persons waging it. Only combination on the part of the workingmen enables this industrial war to be carried on by them with any hope of success, the trust of both parties being always in the strongest battalions. It is obvious that the single workman is very weak, under the conditions of modern industry, as against the employer of labor on a large scale. Combination gives the associated workingmen all the strength of numbers coöperating, and the modern industrial problem — peace or war — is therefore the problem of right and reasonable combination.[1]

[1] "The organization of labor" is the form of words most often used to denote trade-unionism. Gilbert Wakefield long ago suggested, in a note to Adam Smith's classical chapter on the "division of labor," that "the organization of labor" would be a more fitting term to denote the fact illustrated in *The Wealth of Nations* from the industry of pin-making, and familiar to writers on society from the days of Plato to our own time. It is to be regretted that Wakefield's suggestion did not prevail, for there could hardly be a better term to mark the interdependence of many workers, in a modern watch factory, for example, than the word which brings to the front the organic nature of the phenomenon. In an age of biology no phrase could be more felicitous. Were it in use for this purpose, such a term as "the association of labor," or, better, "the association of workmen," or "the combination of workmen" might well be employed to cover trade-unionism. But to little purpose do we quarrel with history, in the endeavor to correct uses of terms that have become fixed, or to propose happier

The natural history of the combination of laboring men may be briefly traced here. In the earlier forms of industry which prevailed before the factory system arose, the more expert handicraftsman practised his trade, as a rule, with the aid of a single journeyman, or an apprentice, or both. Beyond this, as employers, the great majority of handicraftsmen never went, and those who practised their trade at any time with no assistance from journeyman or apprentice probably far outnumbered those who had two or three helpers, more or less advanced.[1] The craftsmen who kept at work any considerable number of journeymen and apprentices were thus comparatively few, and the latter were not numerous enough to create a "labor problem" between employer and employed. This was as true of seventeenth-century England or of colonial America as of eighteenth-century France or Germany. The relics of pre-factory industry which linger to-day in the parts of New England most remote from railways, or the

forms of language. "The organization of labor" means to-day in common use, for the workingman and the economist alike, the association of trade-people in bodies known as "unions." I use "combination" and "organization" as synonymous in this volume.

[1] "In the year 1784 there were in the duchy of Magdeburg 27,050 independent masters and only 4,285 assistants and apprentices. About the same time, in the principality of Würzburg (in Bavaria) 13,762 masters with 2,176 assistants and apprentices were returned. In both territories there were for every hundred masters but 15.8 journeymen and apprentices. Thus, if we assume that the assistants were equally distributed among the masters, one journeyman or apprentice hardly fell to each sixth master. In more than five sixths of the instances the master carried on his work single-handed. In 1780 the town of Bochum (in Westphalia) counted for every five master masons one; in the other crafts they were for every twenty-six master shoemakers three, for every twenty-one master bakers, every eight carpenters, and every five master masons one; in the other crafts they were altogether lacking." — *Industrial Evolution*, by Carl Bücher, pp. 188–189.

similar phenomena which more abundantly manifest themselves in the Appalachian country of the Southern States, take us back to this time of the household functioning as a close economic organization and producing on the farm all the raw material to be used in making clothing and other things needful for the simple life of the farmer or the mountaineer.[1] Any difficulty that might arise in regard to production, distribution, or consumption in such a household would be mainly, if not entirely, a family affair. It would be adjusted in accordance with the traditional rules of domestic discipline; it would be, not a "labor trouble," but a "family jar."

The practice of agriculture, before the advent of machinery, was especially free from industrial dissensions, the employment relation being of the simplest. The great majority of American farmers, for instance, cultivated their few acres with such help as their wives and their children could give. When a man comparatively incapable and therefore not independent, in a farming region thinly settled, was content to hire himself out by the day, or the week, or the month, to a farmer desirous of enlarging his activity, he was usually the only hired man on the farm; he might, in the early days of primitive New England, be even the only person holding such a relation in the town. As long as the number of such persons remained small by the side of the independent farmers themselves, there was no room for anything in the way of disputes except

[1] See who will the novels of "Charles Egbert Craddock," in which Miss Murfree incidentally pictures the industrial life of the Tennessee mountaineers; for a more specific treatment consult the interesting article in the *Atlantic Monthly* for March, 1899, "Our Contemporary Ancestors in the Southern Mountains," by Mr. W. G. Frost.

those mainly due to more or less transient causes in personal characteristics. The farmer labored much of the year side by side with his "help," whom he boarded and lodged, on the same work, for the same hours. The sun regulated the length of the working day for owner and hired man alike. If the farmer could not reasonably expect the pace set by himself, the highly interested proprietor, to be always observed by the less capable help, he at least secured some tolerable approximation to it. A persistent "ca'-canny" behavior on the latter's part would lead to a summary rupture of the relationship; and the primitive equivalent for the modern "black-list," in the effective form of farmers' talk with neighbor farmers, would cause the man dismissed to seek employment at a distance.[1]

As long, indeed, in any occupation, as the owner or master works side by side with the servant or helper, there is little opportunity or reason for labor troubles to arise. There is no public opinion created by a large number of simple laborers. The public opinion of such a time is the creation of the men who work on their own farms the year round, or more or less steadily in their little shops, and who are in fact a *noblesse* of character, capacity, and activity by the side of other men not efficient or thrifty enough to join the ranks of such an aristocracy of diligence and ability. The

[1] The English trade-unionists are responsible, I believe, for the application of the Scotch phrase "ca' cannie" to labor. "Ca'" is not short for "call," but, as the Century Dictionary tells us, is probably derived from the Gaelic *calc*, which is equivalent to the Irish *calcam*, "to drive with a hammer, to calk." "Ca' cannie" (literally, "drive gently") is defined, "to proceed with caution; don't act rashly." The trade-unionist means by it, "Go slow; don't over-exert yourself." The effect of such a motto on the ordinary workman's practice is easily imagined.

exhibition on the laborer's side of the qualities of good workmanship is made before the very eyes of the employer-worker; recognition is immediate and leads to continuous friendliness.

Fundamentally, then, we may say that the relation of the employer to the employed is the relation of an aristocrat (in the good sense of natural ability) to a democracy, conceived as a body more or less numerous, made up of average men. The average man has not force or ability enough to become a successful employer. He usually fails if he tries to be more than the employer of himself, and even in this very restricted field it is often true (as the lawyers say of a man who is his own lawyer that he "has a fool for a client") that he has a most incompetent manager. "Mankind is a poor creature," Sir M. Grant Duff has lately declared; certainly it is a happy privilege for the vast mass of men that they may be directed in their industrial life, not having wit enough to direct themselves or others. No comparative success of the democratic principle in political matters should blind our eyes to the importance of the aristocratic principle in business. The successful employer rises out of the crowd of ordinary men through a process of natural selection which no abstractions of democratic theory can set aside. If all men were equally endowed with the employer's talent (which is perhaps equivalent to supposing that all men were equally destitute of it), one can see how impossible much of modern progress would be, depending as this does on the massing of large numbers of men, coöperating with each other and practising in a high degree the division of labor. An industrial world made up of individuals working separately, each on

his own account, would necessarily have lagged far behind this twentieth century. Happily mankind thus far has been ruled by the principles of a natural aristocracy as well as by those of a natural democracy, and the most common of all social phenomena have been the ability of a few to lead and the readiness of the many to follow. Were an absolutely free field given to talent to-morrow by the utter destruction of obedience and leadership, the old world would soon be reestablished by the doctrinaire democracy, for its own salvation.[1]

No cant is more insufferable to-day than declamation to the effect that all men are "slaves" who have to work for their living on day wages. We may rightly call ourselves "slaves," if we please to use an emphatic word, to the very necessities of our animal existence, which demand that we must work if we would eat; but this is true of all but a very few men. This slavery of the free is not the slavery which they have in mind who use words with any degree of precision in careful discussions.[2] The often disagreeable fact that we can-

[1] As Dr. Holmes humorously put it, if a general conflagration should occur, destroying all accumulated wealth, there would soon be a new class of millionaires, founded on the trade in ashes.

[2] As Dr. J. K. Ingram well says in his *History of Slavery and Serfdom:* "Careless or rhetorical writers use the words 'slave' and 'slavery' in a very lax way. Thus, when protesting against the so-called 'Subjection of Woman,' they absurdly apply those terms to the condition of the wife in the modern society of the West — designations which are inappropriate even in the case of the inmates of Indian zenanas; and they speak of the modern worker as a 'wage-slave' even though he is backed by a powerful trade-union. Passion has a language of its own, and poets and orators must doubtless be permitted to denote by the word 'slavery' the position of subjects of a state who labor under civil disabilities or are excluded from the exercise of political power; but in sociological study things ought to have their right names" (p. 261).

not order our own comings and goings every day of our lives, and do exactly "as we please," does not justify the assertion that we are therefore the "slaves" of the man who finds us work and in return for our work gives us regularly the means of existence. It is pleasant to think of ourselves as our own employers, absolutely free from orders given by any other; but we cannot shake off his power without incurring his responsibility to keep the worker alive and at work! The "slave" that the factory-hand in Salford or Fall River may choose to call himself is not the "slave" of the scientific writer on slavery, — "a man who is the property or possession of another man."[1] Compulsory labor for another is implied, as Dr. Nieboer tells us, in being his possession or property, but does not itself constitute the slave-relation. Especially if we distinguish, as we should, between persons employed in personal service for the well-to-do and the much greater multitude employed in productive enterprises, shall we see the shallowness of declamation about the "slavery" of wage-earners who are often house-owners, completely their own masters outside of certain hours, and, above all, voters in a free state.

The problem of the relations of the employer and the employed is created, then, so far at least as its acute phases are concerned, by the factory system and the use of machinery in large-scale production. The factory system brings together a large number of workpeople in the same place. It would be very strange if this immediate nearness in work-time and in rest-time did not bring about, sooner or later, some form of combi-

[1] Dr. H. J. Nieboer's definition in his *Slavery as an Industrial System*, p. 7.

nation in aid of the workers' common interests. We need not travel far to account for the coming-up of trade-unions. We need much rather, if we are interested in origins, to find the causes why they did not appear sooner, and why their present numbers are not larger. Given man as a social being, and such obvious considerations of self-interest as lie before the factory worker, the result in large and permanent associations can only be a matter for time to ripen. Ignorance and a generally degraded condition, and a consequent lack of force and initiative on the part of the earliest factory hands were probably the sufficient reasons why they did not organize earlier and more effectually. But when factory workers have received a good common-school education, when they are voters, when "self-help" is the familiar motto of the society of which they form a large part, nothing could be more natural, as nothing could be more rational, than combination for the common welfare of the class.

In primitive industry the craftsmen and the agriculturists were many, but employers and employed were few. To-day the conditions are greatly changed, in a world vastly enlarged. The independent craftsmen no longer fill the front of the industrial stage. The employers are many, indeed, but the employed are a great multitude, and the tendency is strongly toward an increase in the number of workpeople employed in a single establishment. It is an age of large-scale production, and only agriculture, the most peculiar and primitive of industries, offers better chances of success for producers on a small scale. Whole regiments, even whole armies, of workers are employed in many of our modern industrial establishments. Especially since the

advent of "trusts" have their numbers swollen to tens of thousands under one management.[1]

The abstract right of combination, in law or in morals, is no longer denied to the workingmen by reasonable persons. It is the use of the right which is the vital matter, — that is to say, the rightful use of the large power which combination actually gives. Only a Philistine employer can object, at this late day, to workingmen combining to maintain their standard of living, or to improve their condition. The "impartial spectator" in modern society long since declared such association a most natural and laudable effort on their part, and he would earnestly encourage workmen so to associate themselves. This is the position of the philanthropists, of the economists, and of the sociologists, — all in full accord to-day with the trade-unionists themselves on this vital matter. Take, for instance, the statement of the Amalgamated Association of Street Railway Employees of America, that its end is, "briefly, by all legal and proper means to elevate our moral, intellectual, and social condition."

[1] The fact is too familiar to need detailed figures, but I may give a few from a convenient source. In my volume *A Dividend to Labor*, I have mentioned, among American establishments, a watch factory employing 2,000 hands; a silk mill, 2,500; a bicycle company, 3,000; a scale works, 1,000; a paper mill, 1,000; a lumber company, 1,000, and the Carnegie Steel Works, 15,000, — now included among the 68,000 employees attributed to the United States Steel Corporation. As a minor indication of the fact that the present labor problem is a problem of great numbers of workmen massed in large establishments, one may take the statement of the English Board of Trade *Labour Gazette*, where it gives tabular information about trade disputes: "Disputes involving less than 10 workpeople and those which lasted less than one day have, as usual, been omitted from the statistics, except when the aggregate duration exceeded 100 working days."

Take the statement, in the present constitution, Article II., of the aims of the Knights of Labor: "To secure to the workers the full enjoyment of the wealth they create; sufficient leisure in which to develop their intellectual, moral, and social faculties; all of the benefits, recreations, and pleasures of association; in a word, to enable them to share in the gains and honors of advancing civilization." The American Federation of Labor likewise declares that its object is the "Mutual protection and benefit of the toiling millions," and "to secure national legislation in the interest of the working people, and influence public opinion by peaceful and legal methods in favor of organized labor." Such purposes commend themselves, and there is no need to quote the many approvals of them in the social literature of our time.

Consenting voices in favor of the association of workingmen might be indefinitely multiplied. Probably most, if not all, of these would say that the association of employers of labor, as such, is just as innocent and just as laudable. Association, more or less formal, has been the usual rule among modern employers, as Adam Smith said, and as we shall see; but they are to be reproached to-day with too little, not with too much, zeal in this direction of organization in order to meet the demands of the unions with an equal front. The praise which all other classes give to combination, as worked out among employers or employed, is to be qualified by one most important remark. If association works for the benefit of a class, well and good, so far. If this association, on the contrary, works also for the injury of another class, it is neither well nor good, for all the members of the social body. Modern society

will heartily approve beneficent combination. It will as heartily rebuke maleficent combination. The authoritative test is to be applied to every class union, not by the opposite class, but by society in general, which includes both classes and all other classes. The public is the supreme court of appeal, and it does not approve of trade-unions making war on employers' associations; or of employers' associations fighting trade-unions to the bitter end; or of trade-unions and employers' associations banded together to fleece the public.

Let us now go on to consider separately, and in more detail, the outlines of the history and the purposes of the two kinds of justifiable industrial combination, — the trade-union standing for the interests of the workingman and the employers' association standing for the interests of the employer. These two organizations, when well developed, conduct with each other that "collective bargaining" which is perhaps the most striking phenomenon of modern production on a large scale.[1]

[1] Discussion of the general history of combination is to be found chiefly in a few volumes like Carl Bücher's *Industrial Evolution*, John A. Hobson's *Evolution of Modern Capitalism*, and Professor R. T. Ely's *Studies in the Evolution of Industrial Society*, part i.; and, to a less degree, in the standard treatises on economics. Here Walker, Hadley, and Nicholson are most helpful.

CHAPTER II

COMBINATION OF EMPLOYEES

THE name usually given to a combination of working-men or working-women to promote their interests as workers is "trade-union."[1] A trade-union, in common speech, is a continuous association, made up of working people only who belong to a particular trade or industry, and formed for the purpose of bringing the pressure of an organization to bear in their interests upon their employer or employers.[2] This pressure of

[1] The first half of this compound word is often written "trades," in the plural. But "trades-union" is an incorrect expression for the phenomenon in question, although it is commonly found in older writers of the first rank, like Jevons and Bagehot for instance, and appears also in Palgrave's *Dictionary of Political Economy*, and in many books of less importance. "Trades-union" would mean, properly, a union of trades, or of persons in various trades, with each other. For example, a number of employees in the different building trades might form a "trades-union" of such workmen. On a larger scale, it might include many employees from several trades not so nearly allied as the building trades. The Knights of Labor, in their district assemblies, include men of all trades in this way. On the other hand, "trade-union" properly means a union of persons in one particular trade or occupation. Strictly taken, it might mean any kind of such combination, so long as all its members were engaged in the same occupation. It might thus be made up of employers alone, or of employees alone, or it might be an association of both parties. As a matter of fact, there are or have been examples of these three kinds of combination. The usual meaning of the word is the one followed in the text.

[2] Mr. and Mrs. Webb, in their standard *History of Trade-Unionism*, define a trade-union as "a continuous association of wage-earners for the purpose of maintaining or improving the conditions of their employment." This definition seems rather too vague for our particular purpose, and in fact Mr. and Mrs. Webb forsake it at a critical moment

a body of workingmen may be exerted mainly in favor of claims for higher wages and a shorter working day, or, in less degree, for any other change which they deem an improvement in the methods or conditions of the industry. Such pressure is equally to be expected from them in the way of opposition to contrary movements by the employers, which imply a reduction of wages, a lengthening of the working day, or any other change in methods or conditions which the workingmen consider unfavorable to themselves.

A trade-union is primarily not a peaceful, but a militant body, — a more or less combative association of workmen organized for mutual assistance in contests, offensive or defensive, with the employer. Association for purposes of industrial conflict is the essential principle of the trade-union. Features of the ordinary "mutual aid" and "benefit" societies may be found in nearly all unions; but, so far as these features have no relation to strikes, they do not affect the relation to the employer which gives these bodies their significance. In some of the organizations mutual aid and benefit are important and effective; but, however notable they may be, they are even here a secondary, not a fundamental matter in the system of trade-unionism. A workingman joins a union, not chiefly to provide against sickness or old age, or even times of unemployment, but mainly and primarily with reference to his future as distinctively a wage-earner. He has in view

later on. The Century Dictionary thus defines the term: "A combination of workmen of the same trade or of several allied trades for the purpose of securing by united action the most favorable conditions as regards wages, hours of labor, etc., for its members, every member contributing a stated sum to be used primarily for the support of those members who seek to enforce their demands by striking, and also as a benefit fund."

the coming up of questions in which his interests and those of the employer will be apparently diverse, if not directly contrary.

Historically, the trade-union is preponderantly an institution of English-speaking workingmen, there being about twice as many unionists in Great Britain and the United States together as there are elsewhere. In England it has had a much longer life than in America, and there has thus been time for fuller development. The history of this development supplies a more substantial foundation for judgment on the present and on the probable future of unionism than the much shorter record it has yet made in the United States. The permanent and essential nature of the movement can be more safely deduced from the condition and the character of the English trade-unions than from those of the American unions. In all probability, American trade-unionism will repeat — either fully or with some "short cuts" — the accomplished phases of English unionism; and judgments, favorable or unfavorable, upon the movement here may well be tempered by a consideration of the applicability of such judgments on the other side of the ocean, where trade-unionism is not in its infancy or youth, but can count a hundred and fifty years of life. Many American labor associations are still in a state of transition. Not yet fully grown, they often lack, of necessity, the wisdom and good sense of mature years, and criticism of unionism from the American standpoint should bear this fact in mind. The English trade-unions are more elaborate in their organization than most unions in the United States, and they have the reputation of employing peaceful methods more often in the adjustment of their "labor

difficulties." This greater elaboration and this preference for peaceful methods are especially conspicuous when we compare English unions with those of France or Germany.[1]

Trade-unionism is one of the most important and significant movements of modern times, even if judged by figures alone. At the end of 1892, according to the statistics of the Board of Trade, the number of trade-unionists in England was a little over one and one half millions, organized into 1208 unions. Ten years later, at the end of 1902, it was somewhat over nineteen hundred thousand (1,915,506) in 1183 unions.[2] In the United States and Canada there were

[1] For convenience' sake, in treating trade-unionism hereafter, I consider it as an English or an American movement, where special exception is not made. England has been the teacher of the world in this method, and America has been her aptest pupil.

[2] The *Labour Gazette* for October, 1903, gives the following table of unionists in the United Kingdom, at the end of each of the eleven years 1892–1902, with the percentage of increase or decrease for each year compared with the preceding year. The one hundred unions for which separate figures are given embrace a considerable majority, it will be seen, of the whole number.

Year.	100 Principal Trade-Unions.		Other Trade-Unions.		All Trade-Unions.	
	Total.	Increase (+) or decrease (—) per cent.	Total.	Increase (+) or decrease (—) per cent.	Total.	Increase (+) or decrease (—) per cent.
1892	900,636	—	604,602	—	1,505,238	—
1893	905,049	+ 0.5	577,211	— 4.5	1,482,260	— 1.5
1894	920,001	+ 1.7	520,145	— 9.9	1,440,146	— 2.8
1895	910,404	— 1.0	500,248	— 3.8	1,410,652	— 2.0
1896 ...	958,018	+ 5.2	539,034	+ 7.8	1,497,052	+ 6.1
1897	1,061,311	+ 10.8	554,582	+ 2.9	1,615,893	+ 7.9
1898	1,038,686	— 2.1	613,307	+ 10.6	1,651,993	+ 2.2
1899	1,112,576	+ 7.1	6 4,313	+ 13.2	1,806,889	+ 9.4
1900	1,159,246	+ 4.2	756,467	+ 9.0	1,915,713	+ 6.0
1901	1,169,222	+ 0.9	758,730	+ 0.3	1,927,952	+ 0.6
1902	1,169,333	+ 0.0	746,173	— 1.6	1,915,506	— 0.6

on July 1, 1901, 1,400,000 members of labor organizations, according to the estimate of experts of the Industrial Commission (vol. xvii. part i. p. xix). In Germany the Encyclopædia Britannica (vol. xxxiii. of 1902) gives the number as about 800,000; in France 492,647 in 1899; in Austria (end of 1899) 157,773; in Denmark, 96,359 on January 1, 1900; in Hungary, 64,000 in 1899; in Sweden, about 60,000 in 1902; in Norway, 24,000; in Switzerland, 49,034 in 1899; in Belgium from 60,000 to 70,000, and in Spain 41,558. The claim is commonly made that there are now more than two millions of trade-unionists in the United States and Canada, but reliable statistics like those of the United Kingdom are wanting; the American Federation of Labor reports that per capita dues were paid in September, 1903, on a membership of 1,745,270.

When we compare these figures for England and America with the statistics of the population and of the working people in both countries, they seem to indicate that some ten per cent. of English-speaking adult male workers, or three per cent. of the entire population of the two countries, belonged to the trade-unions in 1901.[1] But, if we exclude other pursuits, perhaps one fifth of the male workers over ten years of age engaged in manufacturing and mechanical pursuits in the

[1] The U. S. Census for 1900 gives the whole number of male persons over ten years of age engaged in gainful occupations as 23,754,205. Taking the estimated number of 1,400,000 trade-unionists, and making no allowance for the comparatively small number of women in the unions, this would give something like six per cent. of unionists to male workers in this country. In England the number of such workers was 10,156,976 in 1901, and if there were 1,900,000 unionists in 1900, this would give the larger percentage of 18.7 unionists to every 100 male workers.

United States belonged to trade-unions in 1900. Of the whole number of male wage-earners in the United States in 1900, over ten years of age, there were only some six per cent. organized in unions.

But these percentages do not sufficiently represent the strength of the movement, for in England and the United States, to go no farther, the trade-unionists embrace the majority of the men employed in some of the most important trades, such as engineering, the textile industries, and coal mining.[1] In all the trades which are well organized the unionists probably include the larger number of the most intelligent and the most competent artisans. For example, the printers' unions are said to be by far the strongest everywhere, embracing from seventy-five to ninety per cent. of American workingmen in this field of work ; the high standing of the printers for general intelligence is well known. On the other hand, unskilled laborers everywhere are the most poorly organized. Trade-unionism, again, is an increasing force, as the gain of twenty-seven per cent. in Great Britain between 1892 and 1902 shows forcibly. The increase of numbers in the United States has been large in 1901–1903. Great variations in the size of the unions have again and again taken place in their history, and this is due largely to the goodness or the badness of the times.[2]

[1] "Over 69 per cent. of the total membership is found in the building, mining and quarrying, metal, engineering, and shipbuilding and textile trades. The mining and quarrying trades alone contain 520,000, or 27 per cent. of the total number of trade-unionists in the United Kingdom." — *Labour Gazette* for October, 1903.

[2] "Among the non-unionists in the skilled trades a large proportion have at one time or another belonged to these societies. Though they have let their membership lapse for one reason or another, they follow the lead of the union, and are mostly ready, on the slightest en-

Trade-unionism in truth is thus entitled to speak for a large part of the working population with no uncertain voice, and the fruits of the victories it wins are shared by the great body of workpeople outside of the unions.[1]

couragement from its members or improvement in their own position, to rejoin an organization to which in spirit they still belong. In the labour unions the instability of employment and the constant shifting of residence cause the organization to resemble a sieve through which a perpetual stream of members is flowing, a small proportion only remaining attached for any length of time." — *History of Trade-Unionism*, p. 430.

[1] It is interesting to note that, so far, women have played an inconspicuous part in the movement. In Great Britain in 1892 the number of women in the unions was about 100,000, and eight years later there were 122,047. This is a small increase, considering the large number of women yet to be organized. Only 6½ per cent. of the whole number of women employed in 1900 were represented by these 122,047 workers. The increase between these two years was almost entirely confined to the textile trades. The other female workers organized number only 13,000. One hundred and thirty-nine unions included women and girls as members in 1902, the total number of whom at the end of the year was 122,128, as compared with 120,409, in one hundred and forty-six unions, at the end of 1901. In America the proportion of women trade-unionists is much smaller.

In many of the unions men and women workers are admitted on equal terms. "The boilermakers admit only males, but they are not likely to have applications from women. The bakers specially forbid any distinction on account of 'race, sex, creed, or nationality.' The retail clerks, the cigarmakers, and the tobacco workers admit men and women on the same footing. One or two unions give women the advantage of lower initiation fees and lower dues." — *Report of the Industrial Commission*, vol. xvii. p. xxix. Women are also admitted by the boot and shoemakers, the printers, bookbinders, and potters.

According to Dr. Willett's excellent monograph (*The Employment of Women in the Clothing Trade*, by Mabel Hurd Willett, Ph. D; vol. xvi. No. 2 of Columbia University Studies in History, Economics, and Public Law, 1902, pp. 168 f.), "Two industries, — cigarmaking and the manufacture of clothing. — are practically the only ones in this country in which women have been organized in large numbers. The United Garment Workers claim both a larger number and a greater proportion of women than are to be found in any other national union." In the determination of the general policy of this body "the women have had little, if any, influence," but in the formation and conduct

A notable fact of present-day trade-unionism is its financial strength. The funds of one hundred principal trade-unions in Great Britain were reported by the English Labour Department at the end of 1902 to amount to nearly four and a half millions of pounds sterling ($22,500,000), "a sum quite without precedent in the history of labor in any country." Their income for the same year was over two million pounds (£2,109,656), and the expenditures were £1,814,727.[1] According to the annual report of the trade-union that was most conspicuous in the United States in 1902, — the United Mine Workers, — there

of women's unions, women themselves are now much more influential than men. The most powerful influence tending this way is the union label. "Social gatherings of various kinds are extremely helpful, if not absolutely essential, to the retention of the interest of the majority of women members, during the prolonged periods when they are working for no direct and immediate economic advantage."

[1] This table from the *Labour Gazette* of October, 1903, gives the figures for 1892–1902, showing the great gains of the period.

Year.	Membership at End of Year.	Income.		Expenditure.		Funds at end of Year.	
		Amount.	Per Member.	Amount.	Per Member.	Amount.	Per Member.
		£	s. d.	£	s. d.	£	s. d.
1892	900,636	1,464,440	32 6¼	1,432,871	31 9¾	1,576,280	35 0
1893	905,049	1,617,968	35 9	1,839,118	40 7¾	1,355,130	29 11¼
1894	920,001	1,623,409	35 3½	1,427,633	31 0½	1,550,906	33 8¼
1895	910,404	1,548,251	34 0¼	1,382,037	30 4¼	1,717,120	37 8¾
1896	958,018	1,663,268	34 8¾	1,225,619	25 7	2,154,769	44 11¾
1897	1,061,311	1,986,476	37 5¼	1,912,081	36 0½	2,229,164	42 0
1898	1,038,686	1,917,310	36 11	1,498,776	28 10¼	2,647,698	50 11¾
1899	1,112,576	1,848,479	33 2¾	1,270,673	22 10	3,225,504	57 11¾
1900	1,159,246	1,962,981	33 10½	1,557,582	25 3¾	3,720,903	64 2¼
1901	1,169,222	2,060,874	35 3	1,652,110	28 3	4,129,667	70 7¾
1902	1,169,333	2,109,656	36 1	1,814,727	31 0½	4,424,596	75 8¼

In the period covered by the table, the funds of the 100 unions have increased 181 per cent. on the aggregate of 1892, and 116 per cent. on the amount of funds per head in that year.

were on the 1st of January, 1903, over a million dollars in its treasury ($1,027,120.29). The members gave to the relief of the anthracite coal strikers in 1902 more than a quarter million dollars ($258,343.94), and they raised by assessments nearly two million dollars ($1,967,026.34), — making something like two and a quarter million dollars ($2,225,370.28) raised with prime reference to the anthracite coal strike by the United Mine Workers of this country. Labor organizations can now "talk in millions," as well as magnates of Wall Street.

The history of trade-unionism in its classic land has been admirably written by Sidney and Beatrice Webb (1894; second edition, 1902), and the less striking developments in this country have been presented in the composite volume edited by Mr. George E. McNeill, entitled, "The Labor Movement in the United States" (1887), by Professor R. T. Ely in his book on "The Labor Movement in America" (1886), and by Hon. Carroll D. Wright in his work on the "Industrial Evolution of the United States" (1895). It was for a time the fashion to discover the origin of the unions in the craft gilds of the Middle Ages; but these gilds were associations of masters, not of their men (certainly not of the men alone), and no historical connection between the gilds and the unions can be traced. Between various workingmen's associations of the fifteenth and sixteenth centuries, referred to by Mr. and Mrs. Webb, and our modern trade-unions there are some features of likeness, but of lineal relationship there is here again no sign. These associations seem to have died out before the unions came into existence. The actual origin of the trade-unions was very simple and

very natural. In the middle part of the eighteenth century, the wage system and the factory régime had brought together large bodies of working people on a scale previously unknown in the industrial history of mankind. Nothing could be more natural than the occasional or temporary combination of considerable numbers of men employed in the same industry, in the same place, by the same master, perhaps under the same roof. Seeing how common it is to form associations in general, we have a right to say that the workingman would not be a social being if he did not associate in such ways. There is no call to seek profound reasons why men have made labor combinations in the industrial world. The good results of temporary associations must have been immediately obvious. In England the workingmen of the eighteenth century desired better conditions of work and higher wages, and the advisability of uniting for this purpose was seen by those who took part in the first movements. So we learn of trade-unions which were organized temporarily in the English manufacturing towns in the first half of the eighteenth century. Workingmen soon organized into regular and permanent societies, elected a body of officers, and laid more or less regular assessments. Thus, as the years went on, they would have a considerable sum at their command, in the treasury of the union. But it is important to remember that these early societies in the English towns were simply local institutions; in their organization there would of course be much to criticise from the standpoint of today.

The growth of the English trade-unions, when measured by periods of some size, is seen to have been con-

stant, and their development has gone on naturally, but their early career was marked by much persecution. The denial of the right of laborers to combine was a conspicuous feature of English common law from the Middle Ages onward. From the Statute of Labourers, passed in 1351, and the Statute of Apprentices, passed in 1563 and repealed as late as 1813, not less than thirty express statutes were passed down to 1825, which, among other enactments, made the association of workingmen criminal. Workpeople were even forbidden to assemble in order to discuss wage questions in the smallest detail, or working hours, or contracts, or to induce their fellow-workingmen to join them in any way, to increase wages or better their condition. Taken literally, these laws treated with impartiality the relation between employer and employee; what they allowed to one party, they allowed to the other; what they forbade for one, they forbade for the other; but, as a matter of fact, the law had a very poor vision for employers acting together; and employers were never fined, much less imprisoned. There has been no distinct and explicit legislation, in fact, for restraining the employer; the law, the judge, and the jury have been chiefly concerned with the workpeople.

But we have to bear in mind, as Mr. and Mrs. Webb so clearly point out ("History of Trade-Unionism," pp. 41 f.), that the policy of the earlier labor legislation of England was one of paternalism. It was entirely in keeping with the mediæval system that workingmen should be kept in their due place by legal authority; that their movements from town to town should be supervised; that their wages should be prescribed by the justice of the peace, and that refusal

to work for these wages should be severely punished. The ideal of the just relations of "master and servant" (to use the phraseology of the time) included the strict regulation of workpeople by specific laws, which were enacted largely in the interest of the employer and the public. Workingmen, considered an inferior order of society, were not allowed, therefore, to make demands for the bettering of their condition which Parliament considered objectionable; at the same time, the law protected the workingmen against great oppression by the master. Early and mediæval English law contained numerous statutes in the interest of employees. The desire of legislators was to furnish the workingmen decent conditions of life. The law forbade their combining for the purpose of demanding higher wages and shorter hours; but it also forbade employers injuring or harassing them in various ways. The ruling idea was the maintenance of the *status quo* in the lot of the employer as well as in that of the employee.

A great change of thought gradually took place as the factory system came in. The "industrial revolution" profoundly disturbed the former conceptions of paternal government. The manufacturer wished for entire freedom in fixing wages and hours, and it was the natural result that the workingman was left to take care of himself. The principle of *laissez faire* was fully recognized on the side of the employer, but it was not until 1757 that the repeal of the parliamentary statute of 1756 providing for the fixing of piecework prices for weavers by the justices marked distinctively the passage from the old system of protecting the workingman to a more modern "adminis-

trative nihilism." Somerset workmen twenty years later found themselves very much injured by the introduction of the spinning-jenny. Parliament was strenuously petitioned to prohibit the use of it. On this point the employers had a perfectly good case against the workingman, as the introduction of novel machinery was a forward step not to be prohibited. But, as all know, the most trying of industrial situations is the time immediately following the adoption of improved machinery, continuing until the workmen get fully adjusted to the new conditions through the enlargement of the market, familiarization with the new methods, and the finding of employment in other lines. Parliament in this case rejected the petition of the workingmen, but made no sufficient arrangement for their readjustment to the new situation.

At the beginning of the twentieth century we can see plainly that ordinary justice demanded that Parliament, in the middle of the eighteenth century, should grant to workingmen the fullest right to combination in their own interests. This would have been a logical application of the new policy coming into vogue. It would have given the employee, what everybody now sees is an essential of real competition, freedom to become equal with the employers as a contracting party. But the prohibition of combination, which had so long been the policy of England, was illogically continued by Parliament, as it did not realize the inequity of such a provision. We must, however, beware of a too common impression that all English workingmen, from this time on, were utterly prohibited from forming or joining trade-unions, and were treated consistently and constantly as criminals.

Like so many other sweeping statements in the common histories of trade-unions, this assertion must be materially qualified. Mr. and Mrs. Webb have shown, as a matter of fact, that from 1757 to 1799 some combinations of workingmen, at least, were always known to exist and were not disturbed by the law. The attitude of Parliament toward labor problems in the second half of the eighteenth century, to do it complete justice, should be said to have been one of perplexity, and we can understand it better if we consider its attitude toward railways in the third quarter of the nineteenth century, or the attitude of our Congress and legislatures toward trusts in the last quarter. In England the precedents were too strong to allow Parliament to do justice to the principle of combination of workingmen, now obvious, but then very novel. During the first war with Napoleon, and under a prodigious extension of the manufacturing system, Parliament passed the Combination Act of 1799, a drastic measure. Any combination of workingmen had been a criminal conspiracy before that time. But the actual relations of employers and employees had been growing more free, allowing the employer and bodies of workingmen to bargain together without any interference by the law in favor of the employer or the workingmen, as in former days. Under such conditions it was a gross injustice to prohibit workingmen from joining together for mutual aid and the betterment of their condition.

The principal use of this law of 1799 made by the English manufacturer was to hinder men from striking by forcing them, before they were employed, to sign a contract not to combine against the employer for any

purpose whatever. The earlier chapters of Mr. and Mrs. Webb's history furnish numerous instances of the pronounced injustice and tyranny with which the law was applied. In 1817, for instance, the constables of the town of Bolton heard that ten delegates of the calico printers were about to meet to consider the wages paid in the calico industry. Officers of the law arrested the men at once as conspirators, and they were sent to prison for three months as criminals, although no dispute was pending at the time concerning the wages to be paid in the occupation. Then we may read of the imprisonment in 1812 of the central committee of the Scottish weavers for periods ranging from four to eighteen months, because they were directing a strike to obtain the wages which the justice of the peace had fixed, but the employers refused to give. Such was the not infrequent fate of men who assembled in the most informal manner to discuss matters of wages and hours of work. On the other hand and not unnaturally, there has been from the beginning of trade-unionism a constant association with the movement of a larger or smaller amount of threatening and violence, especially in the treatment of non-unionists by unionists.[1]

The extreme injustice practised under the combination laws brought about a movement for the repeal of these laws, especially that of 1799, and the legalization in 1824 of the combination of workingmen.[2] Although an Act of 1825 repealed this Act of 1824, it allowed workingmen to combine for the purpose of shortening

[1] A reflection of this misuse of force may be seen in two powerful novels, — Mrs. Gaskell's *Mary Barton*, and Charles Reade's *Put Yourself in His Place*.

[2] See the *Life of Francis Place*, by Graham Wallas.

hours of work or of putting up wages. All other combinations were left under the ban, and it was some fifty years before trade-unions were completely legalized. In the meantime the "presentation of the document," before alluded to, was not condemned by the law, and it played an important part in the history of the unions after 1825. In the long story of the subsequent ups and downs of trade-unions we are not surprised to discover that, when they were especially prosperous (as in 1833), they were also arbitrary and dictatorial; and that when the employers were in a particularly strong condition, they in turn were tyrannical. Frequently, although combination was permitted by the law of the land, men were arrested for making slight efforts toward a trade-union policy which would pass without notice at the present day, and judges for a long time construed the law with a strong bias toward employers, and imposed extreme penalties, even to the extent of transportation, as in the infamous case of the Dorchester laborers in 1834. Laws of minor consequence adverse to trade-unions were in course of time gradually repealed as public opinion became more favorable. Yet not until 1871, only thirty-three years ago, was a bill passed by Parliament fully legalizing the trade-unions. Four years later employers and workingmen first stood on the same footing before the English law, when the "Master and Servant" Act of 1867 was repealed and the "Employer and Workman" Act finally equalized the two parties to this civil contract. The triumph of the new ideas of democracy was shown in the very title of the new Act. The undefined words "coerce" and "molest" which had been employed in the former Act to the great vexation of trade-unionists, were omitted;

thereafter no act committed by a body of workingmen could be considered illegal unless the same act was wrong before the law if committed by a single workingman.[1]

We are not then to forget this important fact, which has had a great influence upon the thoughts and feelings of trade-unionists even to the present time, that trade-unions in England were until 1875 more or less illegal bodies, and that down to a comparatively recent date they were only tolerated. This fact, which will excuse this rehearsal of a familiar tale, explains many phenomena otherwise inexplicable in the position of the trade-unions of to-day, especially the feelings entertained by the typical unionist toward the courts and toward the political economists as a body. The law courts for generations in England enforced a policy of repression, which, as we can see to-day, was thoroughly unfair and entirely out of keeping with the changed conditions of industry. The economists generally upheld the policy of the employers as a course strictly demanded by economic law. Mr. W. T. Thornton was the first economist of repute to champion vigorously the opposite position in 1870 in his volume "On Labour," which rejected the doctrine of the wage fund, and showed that the real principle of population is not that stated by the economists. Since then the economists have been steadily going over to the side of the workingman in his contest for freedom of association with his fellows, and his perfect right to combine in trade-unions has become an axiom in economic science.

[1] This story, told many times, has been lately recited by John Mitchell in *Organized Labor*, chs. v., vi., and by George L. Bolen in *Getting a Living*, ch. vii.

This has been a notable triumph for the trade-unionists, but they have made too much of it and have retained their animosity toward the economist while he now holds a fairer attitude toward their efforts to improve their condition.[1]

In the United States the history of trade-unions has followed a different line of development. There has been no period of mediæval conditions, and no trace can be found in the colonial period of the existence of a trade-union, as there were no factories. After the rise of the factory system, local unions came into being between 1800 and 1825. The details of their simple constitution may be found in the works of Professor Ely and Hon. Carroll D. Wright.[2] In the earlier part of the last century the workman's day was long, his wages were small, and the factories in New England and elsewhere put in force many oppressive rules and regulations. The combination laws of England were brought to this country under the shelter of the common law, and the old theory of conspiracy was usually maintained by the courts. The social forces of the day were hostile to the infant trade-union movement, and employers, as a rule, were bitter in their animosity. A meeting of merchants and ship owners, for instance, was held in Boston on May 15, 1832, to "discountenance and check the unlawful combinations formed to control the freedom of individuals as to the hours of labor and to thwart and embarrass those by whom

[1] See *Industrial Democracy*, part iii. chapter i., "The Verdict of the Economists." The scripturally inclined may be moved to remember that *sometimes* things are hidden from the wise and understanding and revealed unto babes.

[2] *The Labor Movement in America*, by Richard T. Ely, 1886; *The Industrial Evolution of the United States*, by Carroll D. Wright, 1895.

they are employed and liberally paid." It was resolved that no journeymen should be employed who belonged to any such combination, and that no work should be given to any master mechanic who employed them while they were so pledged to each other and refused to work the customary hours for mechanics. This meeting subscribed $20,000 for the purpose of fighting the movement for the ten-hour day. Such men, however, as Horace Mann, Robert Rantoul, James G. Carter, and Wendell Phillips sided with the workpeople. Rantoul defended the journeymen boot-makers in an important case, which was decided for them in 1842 and finally established the right of workingmen to combine. Many trade-unions were organized on a national basis in the ten years 1850–1860. The Civil War interrupted for a time the natural development of unionism, but the years immediately following the war witnessed the beginnings of national unions of the locomotive engineers, the railway conductors, the cigar makers, and the iron and steel workers.

The detailed history of trade-unionism in America shows that the opposition which the unions have had to encounter here has been comparatively slight beside the persecutions suffered in England. The right of combination has been practically conceded by the law since trade-unions became important in this country, and they have been expressly recognized as legal for the last sixty years. Commissioner Wright once gave as reasons for the slower development of trade-unionism in the United States, the democratic temper of the people, the mobility of labor, and the independence of the mechanic. But American trade-unions have strengthened greatly in recent years and

are likely to hold much of this gain.[1] In this democratic country public opinion is almost everywhere favorable to labor organization, and the number of employers who dispute in any way the right of combination is steadily decreasing.

A minute description of the working of the trade-union would be out of place in this volume, but a brief sketch of its principal features will serve our purpose.[2] The local trade-union is a thoroughly democratic organization originating among the workmen of a particular craft; it is the unit from the union of a number of which the national union arises. The national union, once formed, originates local unions through its organizers, but the self-originated "local" (as it is commonly called in the trade-union world) is the typical form. Usually seven workers of the same craft must join together for the purpose of forming a union; there may be several unions in one place, united by a "district council," made up of delegates from the locals. The local is self-governing, and it regards the national union as a federation having only the powers conferred on it by its constitution. The local determines the wages and the hours to be demanded of employers in the place. It fixes the number of apprentices to be allowed, the initiation fees, the regular dues, the special assessments, and the fines to be collected of members.

Men and women are admitted to the union on an

[1] American unionists claim to-day that they are more numerous than those of the United Kingdom.

[2] The only account known to me of trade-union life from the inside is Mr. F. W. Galton's animated narrative, based on his own experience, given in Mr. and Mrs. Webb's *History*, pp. 431–451, 456–458. The statements of trade-union practice made in the text refer to the majority of American unions.

equality where both sexes practice the trade. Negroes can become members of any union except the railroad brotherhoods, so far as the theory of trade-unionism is concerned; but, practically, separate locals for the white and the colored workers have been found necessary, and in some places separate city federations. Two members of a union usually endorse the written application for membership, which is referred to a committee to report at a later meeting. The candidate is admitted by a majority, or a two-thirds vote. He must either be actually employed in the trade or have had a certain term of service in it, which varies according to the amount of skill required. "In many small-scale industries independent workers and small employers may be admitted." Naturally, no such person is allowed to belong to an employers' association also. As a rule, there is little formality about the initiation of new members. They give a pledge to obey the laws of the union, and promise to keep its proceedings secret, to help fellow-members to employment, and not to wrong them or allow them to be wronged.[1] Traveling and transfer cards of membership are issued by all national unions. New members pay an entrance fee usually ranging from one dollar to five dollars in amount, and the monthly fee varies from twenty-five to fifty cents; in case of delinquency in payment of the regular dues, the member can be suspended or dropped, although this rarely happens. To gain admission to the place of meeting a password is usually given. Meetings are held at least as frequently as once a month, often fortnightly.

[1] The oath taken by new members of the typographical unions has been the subject of much comment recently.

The usual officers are elected every six months, and rotation in office is the common practice. This applies even to the most important position to be filled, that of the "business agent" or "walking delegate," although he can be reëlected for several terms; his powers are comparatively great and his temptations are in proportion, as we shall see. There are comparatively few walking delegates, as only strong unions have the funds required to pay his salary, and he is not at all necessary in many trades. The office plays an especially large part in the building trades. The officials of a local union have little authority of independent action. "In general, every question, from the ordering of a strike to the buying of an account book, is decided by vote of the members in full meeting." This fact may serve to explain why so much time is spent in weekly or fortnightly meetings, in periods of industrial quiet. Considered simply as business bodies, the unions suffer from too much democracy and too little application of the representative principle and the committee method. Of the union officers, only business agents receive pay, and this is but the equivalent of the wages that they would earn at their trade. Every trade-union document must be stamped with its special seal. "Nowhere else, outside of formal legal proceedings, does the use of the seal maintain so large a place in our modern life."

The local unions have first charge of their internal discipline. The offenses they deal with are those which may be committed against the peace and order of associations in general and of their meetings, and specifically, "undermining" other members concerning any conditions of work, or supplanting them; breaking the pledge

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of secrecy; or "advocating the dissolution of a local union, or division of the funds, or separation of it from the national union." Among the general moral demands made by the unions on their members the requirements in regard to the liquor habit are most important. The ordinary union is not, of course, a temperance organization, but Mr. E. W. Bemis, who has investigated the attitude of the unions toward the saloon, has found that they "are a greater factor in developing temperate living than has been supposed."[1] On the whole, Mr. Bemis's figures and quotations show a large influence of the unions in encouraging temperate habits among their members. It is noticeable that "fraud against outsiders is not punishable" under any of the national criminal codes of the unions, and that violence in the conduct of strikes is not set down among the offenses leading to expulsion. General phrases like "the commission of any act which tends to bring the union into discredit" do not point to severity in discipline. In the local unions the officers give bonds, but they usually have charge of only a few hundreds of dollars. Assessments are laid and voluntary contributions are requested in strike-time, but these are uncertain reliances, except in very uncommon cases like the anthracite coal strike of 1902. In places of some size the "central labor union," a federation of the locals, is an influential body in all labor affairs.

The national union is made up of existing local

[1] In Appendix I. to the volume published for the Committee of Fifty in 1901 on *Substitutes for the Saloon*, he gives the results of his inquiries among 45 national unions with a total membership of 531,804. The reports cover "nearly two thirds of the American unions having a national organization and more than two thirds of the membership of such organizations."

unions, but " the national " is the most important factor in originating new unions through its organizers, or those of the American Federation.[1] The printers (1852), the hatters, and the stone-cutters have the oldest of such national unions in the United States. The iron moulders and the cigar-makers followed in the sixth and seventh decades of the last century. Some of the local unions preceded the nationals by half a century. The national union is a representative body, holding conventions usually once a year, but there is a great variety of habit in this respect, the calling of a convention depending in some unions on a favorable popular vote to that effect. Important questions are often put to the test of the referendum in preference to the submission of them to a convention, or in addition to this. It cannot yet be said that the referendum has finally carried the day over the representative system, which is the original form of national unionism in the United States. The customs of the nationals vary greatly in regard to the basis of representation: a few allow one delegate to so many members, but in most unions the smaller locals are much over-represented in proportion to their size, no local being granted more than two to four delegates, even though it be as large as " Big Six," the typographical union of New York, with 5,000 members.

The head of a national has the title of president usually, but he is sometimes called grand master or grand chief. If the organization is large and strong,

[1] The American Federation, in the year ending September 30, 1903, organized 1139 " locals." It has hundreds of " general organizers," who do this work in their leisure, being paid a commission, and a considerable number of " special organizers " on salary.

he will draw a modest salary: the railroad unions are the only ones paying as much as $5,000 a year. The secretary-treasurer is more likely, however, to be a salaried person. The executive board, or council, composed of the principal officers, manages the affairs of the union, under final control by the convention or the popular vote. Much of the business has to be transacted by mail, owing to the wide dispersion of the members of the board. Many of the nationals elect their officers, not in convention, but by direct vote of the membership of the locals; the Australian system is everywhere in force, and a majority vote is required to elect. "Several unions impose a fine, usually 50 cents, upon any member who is qualified to vote and fails to do so." The tendency is strong to permanence of tenure in the chief offices of the nationals; in most of the larger British unions the tenure "has become practically permanent."

While the national in trade-union theory occupies the place of the central government, and the local that of a State government, centralization has not gone far and local autonomy is the rule in regard to the most important matters. In cases of discipline an appeal to the national is allowed. The relations of the two bodies in regard to strikes and arbitration will be noticed later. In addition to the American nationals already named, the most important are the Amalgamated Association of Iron, Steel, and Tin Workers, and the Railway Brotherhoods. In Great Britain the coal miners, the textile workers, the printers, and the engineers furnish notable instances of organization on a large scale, but there is not so strong a tendency to the formation of national bodies as in the

United States, federation being mostly confined to the districts, larger or smaller, in which an industry is located.

The benefit features of the trade-union are important but not primary in its activity. In England they are of far more consequence than in the United States. Only the Cigar Makers and the German-American Typographical Union can be compared with the strong English unions in this respect. In both countries the defects of the unions as benefit societies appear from Mr. Edgerton's remarks: "The payments to be made by the union depend upon its current rules, and those rules may at any time be changed. The scale of contributions and benefits may at any time be altered, even to the extent of abolishing benefits altogether. After a man has for years made his contributions on a high scale, the benefits which he has helped to pay to others may then be cut off, by vote of the members, from him and his heirs. Even if the rules are not altered, one who has contributed to the sick and death funds for a lifetime may at any moment be expelled and forfeit all claim, for reasons quite unconnected with insurance against death or against sickness. He has no appeal from the decision of his fellow-members. Moreover, if the union has accumulated a fund, presumably available for the payment of insurance liabilities, it may at any moment be dissipated in the support of a strike." In practice, of course, many of these defects have been of minor consequence, but it is probably high time for the unions, if they would attract members as insurance institutions, to change their methods. "The first and most imperative reform called for is that the contributions for insurance should be kept rigorously

distinct from those for the general purposes of the order. Especially should they be kept separate from those for the strike fund." [1]

Although the leaders of American trade-unions are very friendly to a development of the benefit system, the great mass of the members object to the large dues which this would require. When the regular running expenses of the unions, local and national, have been paid, and the irregular expenses of supporting strikes have been met, payment for death-benefits is the claim most generally recognized in the United States. Some forty national unions pay death-benefits ranging from $50 to $200, with a very few unions paying $1,000 to $5,000 ; the common amount is $50 to $100. A dozen trades pay sick-benefit to the extent of four or five dollars a week, taking many precautions against fraud. Local unions also provide for death and sickness : " It is probable that the aggregate amount of such local benefits is greater than the amount paid by the national organizations." Permanent disability appeals to numerous unions as a cause for giving aid equal to what is paid at death, or even larger in amount. Thirty-eight leading unions of Great Britain pay a superannuation benefit, but no American union has yet done so, although two have schemes of the kind under way. In a few trades where the workmen furnish their own tools, these are insured by the union against fire or accident. The English unions pay out the largest amount in benefits to men out of work ; " taking one year with another, it even surpasses the payment on account of strikes." The main object of this in the view of the British unions is the maintenance of trade

[1] W. F. Willoughby, *Workingmen's Insurance*, p. 327.

conditions. Only two distinctively American unions do anything in this direction, but many of them provide for "victimized members," who have lost their places because of their zeal for unionism.[1]

A few words must suffice by way of mention of the two great national bodies of workingmen in America which have carried organization one degree higher than the national union of a single trade. The "Noble Order of the Knights of Labor" was organized in 1869 in Philadelphia, on the lines properly indicated by the

[1] This table, from the *Labour Gazette* of October, 1903, will show the large expenditure of 100 leading English unions for unemployed and friendly benefits and also indicate the two other chief expense accounts, for disputes and for management.

Year.	Dispute Benefit.		Unemployed and Friendly Benefits.		Working and other Expenses of Management.	
	Amount.	Per cent. of Total Expenditure.	Amount.	Per cent. of Total Expenditure.	Amount.	Per cent. of Total Expenditure.
	£		£		£	
1892	396,548	27.7	782,270	54.6	254,053	17.7
1893	574,583	31.2	1,006,882	54.8	257,653	14.0
1894	167,645	11.7	982,278	68.8	277,710	19.5
1895	197,216	14.3	931,679	67.4	253,112	18.3
1896	171,218	14.0	782,073	63.8	272,328	22.2
1897	659,126	34.5	937,806	49.0	315,149	16.5
1898	328,511	21.9	863,775	57.6	306,490	20.5
1899	119,503	9.4	826,787	65.1	324,383	25.5
1900	148,568	10.1	959,358	65.4	359,656	24.5
1901	204,603	12.4	1,067,637	64.6	379,870	23.0
1902	216,494	11.9	1,201,033	66.2	397,200	21.9

During the eleven years 1892–1902, the 100 principal unions expended £16,900,000, of which amount over £10,300,000, or 61 per cent., was spent on unemployed and friendly benefits, such as payments to sick, injured, and superannuated members, and on account of funeral expenses. About £3,200,000, or 19 per cent. of the total, was spent on dispute benefit, and the remaining 20 per cent. on working and other expenses. The lowest percentage expenditure on dispute benefit was 9.4 in 1899, and the highest 34.5 in 1897.

The expenditure on each of the principal friendly benefits for the

term "trades-unions." The Knights of Labor took in men of all crafts and trades and even professions. They were organized in local, district, and general assemblies. Extremely secret at first, they did not greatly increase in number until the features of secrecy were largely dropped: then they multiplied very rapidly, until in 1886 the organization claimed to number 600,000 members. Many internal complications, however, arose, and the Knights of Labor meddled altogether too much with politics for their best interests. The very injudicious strike on the Missouri Pacific Railroad lines in 1886 was the beginning of a great decline in the order, which is now supposed to number not more than one hundred thousand members at most.

The American Federation of Labor, on the other hand, was constructed more on the model of the British trade-union congress. The meeting to which its beginning is now referred was held at Pittsburg, in November, 1881. The annual congress of the body is made up of a comparatively small number of delegates, from one

years 1892–1902 is expressed as a percentage of the total expenditure in the following table: —

Year.	Unemployed.	Sick and Accident.	Superannuation.	Funeral.
1892	22.7	14.7	7.0	4.7
1893	24.9	13.2	6.0	4.1
1894	31.3	16.1	8.4	4.8
1895	30.1	19.0	9.4	5.4
1896	21.3	20.1	11.4	6.1
1897	17.1	14.0	7.8	4.1
1898	16.0	18.6	10.7	5.5
1899	14.8	23.8	13.8	7.3
1900	17.8	22.1	12.7	6.7
1901	19.6	20.9	12.1	6.0
1902	23.2	20.1	12.1	5.4
Mean of 11 years	21.7	18.2	10.0	5.4

hundred and fifty to two hundred and fifty, representing the many affiliated societies. The membership of these societies probably exceeded 900,000 in July, 1901; in 1903 the average membership upon which a *per capita* tax was paid was 1,465,800. It is a strictly federal body, having no direct relation to local unions, and with no power to order or to discontinue strikes, its entire function being advisory to the trade-unions which compose its membership. The antagonism of the Knights of Labor and the American Federation of Labor, organized on such different principles, has been long and bitter.

Having noted the principal phenomena in the combination of employees at the present day, we will now turn to the closely related subject of the organization of the employers.[1]

[1] Mr. and Mrs. Webb's *History of Trade-Unionism* easily leads all other works in our language on this subject, so far as England is concerned. On it, as a basis, they have erected a very elaborate structure in their treatise on *Industrial Democracy*, which I refer to here only so far as it gives facts about trade-unionism. In parts i. and ii. of volume xvii. of the Industrial Commission's *Report*, C. E. Edgerton has given a condensed and impartial account of labor organizations in the United States, which stands quite by itself. *The Labor Movement* edited by George E. McNeill; *The Labor Movement in America* by Professor R. T. Ely; *The Industrial Evolution of the United States* by C. D. Wright; *L'Ouvrier Américain*, by E. Levasseur; and *Organized Labor* by John Mitchell, treat well the development of unionism in America. W. M. Burke, Ph. D., is the author of an interesting study of the *History and Functions of Central Labor Unions*. George Howell's *Conflicts of Labour and Capital* speaks for English unionism with more authority than Mr. and Mrs. Webb; his *Trade-Unionism New and Old* is convenient but polemical. P. de Rousier's *Trade-Unionisme en Angleterre* (1897) is excellent; he had four collaborators. Professor L. Brentano's work on the *History and Development of Gilds and the Origin of Trade-Unions* led Mr. Howell and others far astray. H. DeB. Gibbins' *Industry in England*, and Professor E. P. Cheyney's *Industrial and Social History of England* show how sounder views are

taught in our colleges to-day. The report made to the National Association for the Promotion of Social Science in 1860 on *Trades' Societies and Strikes* is still of much value. Two books of interest on French Unionism are D. Halévy's *Essais sur le Mouvement Ouvrier en France* (1901) and L. de Seilhac's *Syndicats Ouvriers, Fédérations, Bourses du Travail* (1902). The Board of Trade's *Directory of Industrial Associations* for 1903 gives a full list of trade-unions in the United Kingdom, pp. 38–99. For the factory system see R. Whately Cooke Taylor's *Introduction to a History of the Factory System* and *The Modern Factory System.*

CHAPTER III

COMBINATION OF EMPLOYERS

We have seen how natural and easy the association of workmen in trade-unions has been and is. The association of employers of labor among themselves has always been more obvious and more easy still. As Professor Marshall has keenly said: "Even where employers are not in any combination, tacit or avowed, to regulate wages, each large employer is in his own person a perfectly firm combination of employing power. A combination of a thousand workers has a very weak and uncertain force in comparison with that of a single resolute employer of a thousand men." [1]

When the modern factory system arose, the practical situation was often one in which hundreds or thousands of comparatively ignorant and unskilled workmen on one side, in a particular place, confronted two or three employers only on the other side. Without any necessity of forming a regular league with a definite constitution, these two or three employers could easily enjoy all the advantages of combination. "An agreement between gentlemen" under such circumstances is exceedingly natural and very convenient. As the factory system has extended widely, and manufacturers have become more numerous, agreements of somewhat more binding character have often been made without a formal association. Thus, as a matter

[1] *Elements of Economics of Industry*, p. 382.

of fact, employers have easily had the advantages of association without the necessity of submitting to some of its inconveniences. But before many years it was found that formal unions of employers would be advantageous to their interests. In 1814, for instance, in Sheffield the master cutlers formed a dealers' and manufacturers' union in order to keep down wages to the existing rate. This practice was as contrary to the combination laws of the time as any trade-union. But the combination laws bore hard upon workmen and lightly upon employers, and the latter were not disturbed.[1]

Since workingmen have been permitted by law to organize freely, there is no good reason for obstructing, in any way, the development of the organization of employers in opposition to the trade-unions. In this direction England is much in advance of the United States. As Professor Ashley says in his recent work, "The Adjustment of Wages," the employers in the coal trade, for instance, "in each district are sufficiently well organized to allow of negotiation in a repre-

[1] Mr. and Mrs. Webb thus mark the inequity of the combination law of 1799: "It is true that the law forbade combinations of employers as well as combinations of journeymen. But even if it had been impartially carried out, there would still have remained the inequality due to the fact that, in the new system of industry, a single employer was himself equivalent to a very numerous combination. But the hand of justice was not impartial. The 'tacit but constant' combination of employers to depress wages, to which Adam Smith refers, could not be reached by the law. Nor was there any disposition on the part of the magistrates or the judges to find the masters guilty even in cases of flagrant or avowed combination: . . . during the whole epoch of repression, whilst thousands of journeymen suffered for the crime of combination, there is absolutely no case on record in which an employer was punished for the same offence." — *History of Trade-Unionism*, p. 64.

sentative capacity."[1] In this and other trades the "Directory of Industrial Associations in the United Kingdom," published by the Board of Trade (third issue, 1903), presents a long list of associations of employers "concerned with matters relating to the employment of labor" specifically. The complete list fills 31 pages, embracing 38 national associations and federations, and 727 local associations.[2] The employers

[1] In a note to this passage (p. 32) he adds that "it is more difficult to obtain information about employers' than about workmen's unions, since the former do not make any returns of membership, funds, expenditure, etc. to the Board of Trade. . . . However incomplete the membership of the associations may be, it is evident that the arrangements they make in the matter of wages are accepted by the great body of coal owners."

[2] The building trades occupy nearly one half of this space with their 13 national associations and federations of master builders: slaters, plumbers, and plasterers; and painters and decorators; and a long roll (411) of local associations of master builders, bricklayers, masons, carpenters and joiners, slaters, plumbers, plasterers, painters and decorators, and glaziers. Next in importance comes mining and quarrying: at the head stand the Federated Coal Owners and the United Kingdom Granite and Whinstone Quarry Masters Association, with the Cleveland Mine Owners Association, and 32 local associations in both trades. The metal, engineering, and shipbuilding trades follow, with 10 district associations in the iron and steel trades, 3 federations, and 84 local associations. In the textile trades one finds 4 federations and 46 local associations. Under "clothing trades" come 2 federations and 29 local associations of boot, shoe, and clog manufacturers; 1 federation and 36 local associations in tailoring; in the hat manufacture, 1 national and 3 local associations. In transportation industries there are 11 local associations of cab, cart, and car owners; 1 national association of "ship, barge, fishing vessels, etc." owners and 10 local bodies; 1 local association only in agriculture, but in printing and kindred trades 6 national associations and federations and 37 local associations. The wood-working and finishing trades have 4 of the larger associations and 31 of the smaller local ones. The glass, pottery, and brick trades show 8, 5, and 8 employers' unions respectively. Under "Food, etc., Preparation," come 3 national associations of master bakers and confectioners and 38 local associations, and 3 of the latter in the corn trade. The saddlers have a

maintain a parliamentary council, and the cotton employers a parliamentary association. In 1873 there was reached the highest degree of combination of this sort in the transient National Federation of Associations of Employers of Labour, made up of employers from all branches of industry. This corresponded to the Trade-Union Congress of the country, on the other side of the controversy. American employers and others have recently formed a similar body under the name of the Citizens Industrial Association of America, a much less appropriate title.[1]

One of the most valuable documents resulting from the Royal Commission on Labour was the compilation of "Rules of Associations of Employers and of Employed," prepared by Mr. Geoffrey Drage, the secretary. From Mr. Drage's introductory memorandum on the rules of the employers' associations I extract the following information, and Appendix I. gives the condensation made by him of the rules of the National Association of Master Builders of Great Britain, as a good instance of the regulations of such bodies (p. 308), and a paragraph also from the rules of the Iron Trades Employers Association. About seventy employers' associations reported their rules to the Commission, but some of these bodies were purely commercial organizations, not concerned with the labor question. Very few of these associations were registered, and of course fewer still were incorporated. "Several . . . desire to regulate wages, hours, and other conditions of employment." Thus

federation and 11 locals. Seven associations are found among the master bone brush makers, the mat makers, tanners, laundrymen, card makers, bill-posters, and concreters.

[1] See Appendix I. for an account of this association.

the Iron Trades Association declares one of its objects to be coöperation among its members to resist demands of trade-unions concerning hours of labor, piece-work, over-time, and employment of men and boys on machines or otherwise. The Liverpool Employers Labour Association wishes to establish "an office for the organization and registration of labour." Most of the associations desire to regulate their relations with the workpeople so as to avoid strikes and lockouts, or to give assistance to their members whose employees have struck. The need of united action in opposition to organized labor is emphasized.

These associations are usually governed by an executive council, or a board of directors, the number of these varying greatly. The various sections of the trade are usually considered in the choice of directors. The other offices are honorary, but the secretary is a paid and active official. General meetings are held quarterly or half-yearly, and special meetings upon the call of the council. Sometimes each firm represented has but one vote; in other associations each member has from one to eight, or sixteen, votes, according to the amount of annual production. Branch or local associations have the same general constitution as the larger bodies. Membership is, of course, usually restricted to "companies, firms, or individual owners, or managers employing labor, or dealing in materials in some particular trade or trades." A fixed entrance fee is charged by some associations; in others this is determined by the amount of property owned by the member, or by the wage-bill paid by him. The annual subscription, in like manner, is sometimes a fixed sum, but the more common way is to graduate it according to property

owned or wages paid. Provision is made for special levies in cases of emergency.

As soon as a labor dispute arises in the works of a member he must report it to the secretary of the association, who will at once call a general meeting. "During a strike or lockout members may not take independent action in the way of conceding the demands of the men or making any propositions to them, without the consent of the association." Some associations assist members whose employees have struck, "if the strike arises out of a matter of principle or in consequence of action taken at the advice of the association," but this is not done if the member has caused the trouble by his own action. Many associations fix the wages which their members are to pay, the hours of labor, and the times of payment; and others have rules regarding apprenticeship, giving notice before leaving work, and the production of a "character." Free competition between members is forbidden in several ways. A member may not induce the employee of another member to leave his work; or engage a workman from the workshop or colliery of a member where a strike is in progress, or even engage any new employees at such a time. The black-list is found occasionally, and no member may hire a man whose name is on it. Information of value is not to be imparted to outside firms or persons. In one association each member must assist any other member whose men have struck "by executing orders by him at a profit not exceeding ten per cent." Some associations compensate members from the general treasury for loss of profits during a strike, or in case of a boycott.

The relative weakness and strength of the two par-

ties to labor disputes have been greatly altered in the last generation. Formerly the workmen, ignorant and unorganized, were engaged by a capitalist-employer, intelligent and wealthy. He was usually able to join easily in a real combination with other manufacturers of his neighborhood without formal articles of association. The employee was at great disadvantage of position. Now, in many trades, the unions have changed all that. They can often dictate terms to the ordinary employer of labor who is unassociated with his fellows. The two parties are thus again very unevenly adjusted to each other, the balance inclining in favor of the workingman. There is, as yet, no body of employers in the United States to be compared in power with the American Federation of Labor. This federation has a considerable number of salaried officers; however moderate their salaries may seem to the outside world, they are very efficient men. It spends over ten thousand dollars a year on its publications in support of its principles, and it contributes, if it will, the strength of its moral support to a strike in any part of the country. The National Association of Manufacturers is the main body that could properly be mentioned in the way of contrast. This body has but one organ, and its main method of impressing the public is by means of the published reports of its annual meetings; and it has no treasury of consequence. The most imposing State organization of unionists, the Illinois miners, on the other hand, contribute to their treasury three hundred and sixty thousand dollars a year. This sum is available in support of strikes within the State or without. As a near-by instance of the difference in organization, I may mention Meadville, Pennsylvania, a

city of some twelve thousand persons, where "labor" is "organized" to the extent of nine tenths at least of all the skilled workers, but there is no organization of employers as such.

It is, therefore, a fact plain to the common observer even that labor is better organized than capital at present in this country, in respect to all questions of dispute between them. Sagacious employers are accordingly beginning to see that the employers of the country need combination, first of all. Instead of denouncing combinations of working people, they should immediately apply the principle to themselves: thus organized, they will be much better able to cope with this same principle as applied by the workingmen. The most widely known advocate of this truth is Mr. Herman Justi, the Commissioner of the Coal Operators of Illinois. He has been active for several years in demanding the organization of employers of labor. The volume entitled "Industrial Conciliation" (1902) contains a paper read by him before the Chicago Conference in December, 1900, which discussed conciliation and arbitration. Mr. Justi has repeated his argument in a lecture delivered in Faneuil Hall, Boston, in November, 1902, and published in the "Bulletin of the National Metal Trades Association" for December, 1902. Another vigorous statement concerning the relative unorganization of employers has been made by Mr. Frederick P. Bagley of the Master Builders Association of Chicago (to be found in the volume just named, p. 192).

It is pointed out with much truth and force by such authorities as Mr. Justi and Mr. Bagley that the individual employer is comparatively powerless before a

strong trade-union. They therefore advocate the policy of combination of all employers in the same industry in every State, and would have the national associations ally themselves to form an American Federation of Employers, on the plan of the English National Federation of Associations of Employers of Labour recently mentioned. It is quite obvious to the philosophical observer that the principle of combination is one that ought to be applied impartially on both sides of the labor world. As long as one side, to use Mr. Justi's comparison, is as well disciplined as a regular army, and the other more like a home-guard, there will probably be no permanent adjustment of the difficulties between them. In the regulation of wages and hours of labor there is need of two thoroughly organized forces in order that "collective bargaining" may be conducted reasonably and fruitfully.

Experience has spoken with no uncertain voice in favor of the policy in question. Let us take an instance from the English record. In 1897 the employers in the engineering business greatly extended such an association among them, and thereby defeated a strike of the Amalgamated Engineers, which, if successful, would probably have had the effect of driving a great many employers out of business. An apparently impartial authority (the Encyclopædia Britannica, vol. xxxiii. p. 24) thus presents some phases of this notable strike: "The immediate occasion of the stoppage was a demand on the part of the men for an eight-hour day in London workshops, but this issue was soon overshadowed in importance by other questions relating to the freedom of employers from interference by the unions in the management of their business, especially

in such matters as piece-work, over-time, selection and training of workmen to work machines, employment of unionists and non-unionists, and other matters affecting the relations of the employer and employed generally throughout the United Kingdom. . . . In the absence of any general combination of employers, the unions were able to bring their whole force to bear on employers in particular localities, with the result that the stringency of the conditions and restrictions enforced varied very greatly in different districts, according to the comparative strength of the unions in those districts. Employers complained of being subject to vexatious restriction not imposed on their competitors, and they declared that they were severely handicapped as compared with America and other countries, where engineering employers had much more complete control over the management of their business." The Federation of Engineering Employers, formed in 1895, soon spread over the whole United Kingdom. It adopted the policy of threatening a general lockout of trade-unionists whenever any particular individuals or localities were threatened with a strike. The lockout notices were framed in such a way as to affect twenty-five per cent. of the trade-unionists employed each week. They were to be discharged by instalments until all were locked out. In June, 1897, when the Federation determined to support the London employers against the strike for an eight-hour day, it was understood that the struggle had at length come for "a settlement of all the important questions at issue between the Federation and the unions as a whole." The Engineers immediately withdrew all their workmen at once from the workshops of the Federa-

tion. When the dispute closed 702 employers had become involved and 47,500 working people. The employers absolutely refused to grant any reduction of hours of labor. On January 13, 1898, the London demand for an eight-hour day was withdrawn, and on January 28 a settlement was reached which was a complete victory for the employers. The employers have used their victory with moderation, and the relations between them and their workmen "seem, on the whole, to have been improved, all matters likely to cause dispute being now amicably discussed between the representatives of the respective associations."

As an instructive instance from American experience I will quote, without endorsing their tone, but simply for the facts that they contain, two reports of the president of the employers' association of Dayton, Ohio. In 1902 he wrote: "Realizing the serious conditions which existed in Dayton, the rapid advancement organized labor was making, and the bold and aggressive manner in which it was everywhere asserting itself, in the spring of 1900, when organized labor was marching up and down the town with banners flying, defying the law and all rights of our manufacturers, business men, and independent workmen, by intimidation, coercion, boycotting, and all sorts of lawlessness, whereby our newspapers, police department, politicians, and courts were influenced to an alarming degree, a meeting was called as the result of a conference between a few of our citizens. Several informal meetings followed, resulting in a committee being appointed to prepare a constitution and by-laws for a permanent organization. The Employers Association was organized in June, 1900, with thirty-eight firms and cor-

porations as charter members. The importance and influence of the Association at once became apparent in many ways, and evidence of a changed condition was visible all about us. Notwithstanding the fact that the Association did not add materially to its membership the first year, its moral influence resulted in the accomplishment of much reform, labor leaders became less dominant, and no new unions were organized, whereas during the previous year a labor leader reported the formation of twenty-six new unions." In April, 1903, he declared: "We have had two years of industrial peace and quiet in Dayton, which, following in the wake of general disorder and lawlessness, should inspire us to stronger bonds of unity."[1]

In the United States there are conspicuous instances of the advantages of the organization of employers into national associations. The glass trade is one example, but the union of the employers is not so strong or so formal here as in the foundry trades. In the stove foundry business, after the great strike in 1886, the manufacturers organized the Stove Founders National Defense Association. The relations between the iron moulders and the stove manufacturers had been very hostile, as a rule, for years. The Defense Association provided for the levy of assessments in the case of strikes, and also for the performance of work by other establishments while a strike was "on;" and in various other ways it sought to promote the welfare of the trade during labor troubles. "The organization is one of the strongest ever established among manufac-

[1] In Appendix I. will be found the substance of the rules of the Dayton Association. The Bulletin of the Metal Trades Association tells of similar cases in Beloit, Wis., Rutland, Vt., and Kankakee, Ills.

turers in the United States for mutual aid in dealings with labor." Disputes with the Iron Molders' Union continued during the next five years, but the manufacturers had more success than before. In 1891, one of the manufacturers, who had himself been an iron moulder and prominent in the union, proposed a scheme of conciliation. Since that time there have been no strikes in the trade, and all difficulties have been adjusted by the excellent system of conciliation and collective bargaining between the union and the association. This is a most important example of the value, not only to the employer, but also to the cause of industrial peace, of employers' combinations. The National Founders Association followed the same method in 1898; its experience has not been so fortunate as that of the Founders Defense Association, but the results have been a great improvement on the previous record. The National Metal Trades Association, a strong combination formed in 1899, made an agreement of a similar kind with the International Association of Machinists in 1900, but this agreement broke down in 1901, and it has not been renewed since. "It has repeatedly been asserted by employers and employees, who have had experience with similar systems, that it is necessary that each side should learn, perhaps by one or more prolonged conflicts, to fear the strength of the other side." [1]

In the iron, steel, and tin industries we find the most widespread organization of employers, resulting in the formation of sliding scales and industrial agreements between them and their workmen organized in the Amalgamated Association of Iron, Steel, and Tin

[1] *Report of the Industrial Commission*, vol. xvii. p. 360.

Workers of the United States. Nearly all the manufacturers who were formerly members of such employers' associations are now members of the trusts or "industrial combinations." The Republic Iron and Steel Company, the American Sheet Steel Company, and the American Tin Plate Company are the three most important, — these being now united in the United States Steel Corporation. Mr. Justi well points out the difference between the combination of capital in the trusts of the day and the organization of capital which is desired in order to cope with the trade-unions. The phrase "organization of capital" is quite inadequate in this direction. "Combination of employers" much more precisely indicates what is needed. The purpose of such combination, it must not be forgotten, should be, not to make war upon the trade-unions in a vain dream of exterminating them, locally or nationally, but to deal on equal terms with them under the methods of collective bargaining and conciliation accepted and approved in the trade. When one side has developed the principle of combination to a great degree of perfection, it is plain common-sense for the opposite side to meet it halfway. Employers of labor in the United States should have no hesitation in applying the suggestions of Mr. Justi and Mr. Bagley. In the next few years they can show their judgment and sagacity nowhere more effectually than in the direction of local organization. Eventually they should have strong combinations for the different States and for the country at large. Combination on the part of employers of labor is the inevitable precedent to a systematic method of bargaining with the trade-unions.[1]

[1] The combination of the employer and the employed against the in-

terests of the public is a form of association which does not come within the view of this volume. Such an association as Mr. R. S. Baker describes in *McClure's Magazine* for September, 1903, under the title "Capital and Labor Together," is purely a conspiracy in restraint of trade, and needs no consideration from the standpoint of industrial peace. Peace has been only too well attained in such cases! In a little book on *The New Trades Combination Movement*, Mr. E. J. Smith, of Birmingham, described an organization of a somewhat similar kind, to which the public might have found reason in time to object as a conspiracy. In the *Economic Review* for April, 1903, Mr. Smith has related the failure of this movement.

See for further details of combinations of employers the *Rules of Associations of Employers and of Employed*, issued by the Royal Commission on Labour; the *Directory* published by the Board of Trade; vol. xvii. of the *Report of the Industrial Commission*, part iii. on "Collective Bargaining, Conciliation, and Arbitration," pp. 325–422; the papers of Mr. H. Justi and Mr. F. P. Bagley in *Industrial Conciliation* (pp. 192, 204); Mr. Justi's various pamphlets on the subject; the monthly *Bulletin of the National Metal Trades Association;* and *American Industries*, the semi-monthly organ of the National Association of Manufacturers.

CHAPTER IV

COLLECTIVE BARGAINING

A FELICITOUS term, now coming into general use, to denote the essential method of trade-unionism, is Collective Bargaining. The words strike to the very centre of trade-union activity. The more common use of this exact and expressive term will greatly clear up the discussion of trade-unionism in general and of arbitration in particular; for much that commonly goes by the name "arbitration" is properly "collective bargaining." Dr. E. Dana Durand thought in 1901 that the wide diffusion of the term in this country was perhaps doubtful, but it is already fast winning its way among careful writers, and it will probably commend itself to the generality before long.

We owe this very convenient and accurate phrase to Mrs. Sidney Webb. In her volume on "The Coöperative Movement," published in 1891, speaking of "a conjunction of coöperative and trade-union organization," which is to "bring the producer and consumer face to face," she says: "Individualist exchange must follow individualist production, and give place to collective bargaining" (p. 217. The next sentence begins, "To gain a clear conception of the collective bargain — of the social relation which will supersede the individual relation." On page 220 Mrs. Webb mentions "the basis of the collective bargain.") This

appears to be the first use of the term in our language.[1] It was brought to the front emphatically in Mr. and Mrs. Webb's "Industrial Democracy," published in 1897, in which chapter ii. of part ii. was entitled, "The Method of Collective Bargaining." This chapter is still the most elaborate treatment of the subject to be found, with the exception of the pages devoted to the method in Dr. Durand's report on collective bargaining, conciliation, and arbitration in vol. xvii. of the "Report of the Industrial Commission" (pp. lxxiv.–ci. and pp. 325–422). In a note Mr. and Mrs. Webb say: "The phrase 'Individual Bargaining' is used incidentally by C. Morrison in his 'Essay on the Relations between Labour and Capital' (London, 1854), as equivalent to 'what may be

[1] W. T. Thornton in 1868 had come near to this phrase in his very liberal treatise, *On Labour*, in which he spoke of "workmen . . . at liberty collectively to refuse to work except on terms to which . . . they may have collectively agreed." Thornton, in fact, used the adverb "collectively" in the ordinary sense in which we employ the adjective "collective" in the term in question, while Mrs. Webb plainly had in mind bargaining in the collectivist state; so that "collectivist bargaining" would have been a more accurate phrasing of her thought. In *Industrial Democracy* the term is used without any reference to the socialist state, or to Mrs. Webb's socialistic implication in *The Co-operative Movement*. The first use of it in a "joint" or collective agreement has been noted by Professor Ashley in the Terms of Settlement in the great engineering dispute of 1898; the official note to the fourth section says: "Collective bargaining between the miners' and the employers' associations is here made the subject of distinct agreement."

M. Ostrogorski speaks of "collective sovereignty" in his *Rights of Women* (1893); chapter ii. bears this title, and begins thus: "The exercise of supreme power no longer belongs exclusively to princes, but emanates from the nation. . . . In other words, sovereignty has become collective instead of individual." He here uses a phrase not without application to the trade-union in its relation to the individual workman, and to the employers' association in its relation to the single employer

called the commercial principle,' according to which the workman endeavours to sell his labor as dearly and the employer to purchase it as cheaply as possible' (p. 9) "

The practice which the phrase "collective bargaining" denotes has long been familiar to trade-unions and to persons who have observed their activities, or have had to deal with them. This kind of bargain is much older than is commonly supposed. Mr. and Mrs. Webb give several instances of the use of the method in England as far back as the early years of the nineteenth century.[1] The commonness of the practice in our own day is shown by the frequent appearance in the newspapers of such paragraphs as this : —

PITTSBURG, June 17, 1903. — The American Tin Plate Company has signed the annual wage scale with the Tinworkers International Protective Association. It is practically the same scale as is now in force, and will go into effect on July 15. The workers asked for a number of concessions, nearly all of which were withdrawn. The signing of the scale will affect about 10,000 workmen.

The nature of this most characteristic phenomenon of modern industry will appear from brief consideration. "Individual bargaining" takes place when one person bargains with another concerning a service or

[1] Speaking of the London printers, they say: "In 1804 we even hear of a joint committee, consisting of an equal number of masters and journeymen, authorized by their respective bodies to frame regulations for the future payment of labour, and resulting in the elaborate 'scale' of 1805, signed by both masters and men. The London coopers had a recognized organization in 1813, in which year a list of prices was agreed upon by representatives of the masters and men. This list was revised in 1816 and 1819. . . . The London brushmakers in 1805 had 'A List of Prices agreed upon between the Masters and Journeymen,' which is still extant." — *History of Trade-Unionism*, p. 66.

a commodity — it may be, for instance, the buying and selling of a house, or the engaging of A as a workman by B. When neither of the parties to the bargain is a corporation or an organization, the transaction is strictly within the limits of the individual bargain. Confining our view to the field of services, we see that this method has been, down to comparatively modern times, the usual practice with respect to the labor contract. For example, John Smith, living in Lynn, Massachusetts, comes to the foreman of one of the numerous shoe factories located in the city, and asks what they are paying for labor, by the day or the piece, and if he can get employment. He is told that they are paying two dollars per day, and would like to engage him. He accepts this offer, work is given him, and he takes his place in the factory. This is a bargain purely between John Smith, employee, and Thomas Jones, employer, the head of the factory. If the foreman becomes dissatisfied with the quality of the work which is done by John Smith, or if he thinks that John Smith is not doing his full duty at the machine or the bench, John Smith is asked to call at the office to get the wages which are his due, and he receives notice that his services are no longer desired. Accordingly, he leaves the employ of the firm and has nothing more to do with it or its workpeople. The bargain is closed, and this is the recognized end of it.

One can easily see how weak is the position of the single workman, one of a thousand perhaps, under such circumstances, and how thoroughly the employer is master of the situation. In time the workmen come to see this, and they form a union, especially and mainly to reënforce John Smith, the typical individual.

All the men in the shop join the union, and soon they present some demand, as an organization, to the head of the shop. For instance, they ask that, after the first day of January next, nine hours shall constitute the working day for twelve months, at a rate named. Let us suppose that the employer refuses to grant these terms. If he is acting for and by himself alone, he suffers from the superior organization of his men. Although, as Professor Marshall says, he is in himself a kind of combination, he is not so strong, probably, as the trade-union, made up, not only of his own workmen, but also of the workmen in the other factories. Suppose, then, that all the manufacturers in the boot and shoe business in the city of Lynn form an association. Then all the trade-unions in that industry in Lynn, through a district council representing the boot and shoe workers of the city, may vote to make a demand on the employers' association for higher wages and certain specific improvements in the conditions of their labor. If both the union and the association are well advised, the John Smiths federated will meet the Thomas Joneses federated, through representatives from both sides. This joint body will elect a chairman and proceed to discuss the questions connected with the desired bargain for the ensuing year, and will come to some kind of a compromise. This is collective bargaining — actual bargaining, with all its demands and counter-demands, its threats and its concessions — between two bodies, one the successor of the individual buyer and the other the successor of the individual seller. The joint agreement of the two unions or associations is the successor of the more or less formal agreement of the two persons engaged in the individ-

ual bargaining. As we have seen, the workingmen of this country have learned the lesson of organization better than American employers, as a body, have yet done. So far as formal association is concerned, the superiority of the employees is very evident.

Collective bargaining may be practised with every degree of formality or informality. The most informal proceeding of the sort may take place in a certain factory when some change is desired by numerous employees, or by the whole body of them. After more or less of private discussion, they meet together after work hours, and agree to send a committee to present to the employers their grievances or suggestions. If these find a friendly reception, the bargaining is consummated. It is not necessary to these simpler methods of collective bargaining that either party, or both parties, should be formally organized. The single employer (himself a *quasi*-combination) and the unorganized employees can easily come together in what is very informal, but very effective, collective bargaining, in case the two parties make an agreement concerning the matter in question. The most highly developed and formal collective bargaining takes place, on the other hand, when the bargain is between a national trade-union on one side and a national association of employers on the other side, the bargain being set down precisely in writing, and running for an agreed term of years. Such collective bargains are often called "Joint Agreements" [1] in the United States, and they

[1] This term is not so satisfactory as "collective bargain." All agreements whatever being necessarily joint agreements, the peculiar nature of the contract, in that it is between two bodies of men, is not indicated by the words. "Collective agreements" is the better phrase, used a number of times by the Royal Commission on Labour (*Final Report*, pp. 54, 116).

have been made in some instances to cover three, or even five, years to come.

To give the most specific and concrete character possible to this discussion of collective bargaining, I shall present in this chapter several collective agreements which have been, or now are, in force in different industries. Detailed comment will be needless, as they are self-explanatory. But first a specimen may be given of "agreements" which may have been called "joint agreements," but which might have been more properly styled "articles of dictation." The agreements made in 1899 between the organized carpenters of Chicago, and of New York, and individual employers deserve indeed the name of "leonine contracts," — contracts forced upon one party by the other, and not the result of a true collective bargaining process in which both parties are, in a large measure at least, free contractors. The following agreement is a sample of documents submitted in April, 1899, by the Carpenters Executive Council of Chicago and the vicinity to individual master carpenters, and signed by them.

Articles of agreement between T. Nicholson & Sons Co., contracting carpenters and builders, party of the first part, and the Carpenters Executive Council of Chicago, party of the second part.

The party of the first part covenants and agrees, in consideration of the strict observance by the party of the second part of certain rules, regulations, and obligations herein set forth, that he or they will faithfully keep and strictly observe the following rules:

Article I. Eight (8) hours shall constitute a day's work between the hours of 8 A. M. and 5 P. M., except Saturday, when work shall cease at 12 o'clock noon.

Art. II. The minimum rate of wages for a journeyman

carpenter shall be forty-two and one half ($42\frac{1}{2}$) cents per hour, from April 1, 1899, to March 31, 1900.

ART. III. Double time shall be allowed on all overtime, Sunday work, New Year's Day, Decoration Day, Fourth of July, Thanksgiving Day, Christmas Day, or days celebrated for the foregoing. No work shall be allowed under any pretence on Labor Day, which shall be the first Monday in September, or after 12 o'clock noon on Saturday. But if two or more shifts of men are employed, the same men shall not be allowed to work on more than one shift under any circumstances, and six hours shall constitute a night shift, and the wages for such six (6) hours shall be equivalent to eight (8) hours during day.

ART. IV. Every journeyman carpenter shall receive his pay in full each week on Tuesday, not later than 5 P. M., but in case of discharge he must be paid at once on the job or waiting time paid. In case of a temporary lay-off for any cause whatever, he shall be paid in full if he so demands.

ART. V. All apprentices shall belong to the union and carry the current working card, but no one shall be allowed to work as an apprentice after having attained the age of twenty-one (21) years.

ART. VI. There shall be a steward appointed by the carpenters on each job, whose duty it shall be to see that all carpenters employed shall carry the current working card issued by the Carpenters Executive Council, and report any violations of the articles contained in this agreement.

ART. VII. The foreman controlling any job shall belong to the union, carry the current working card issued by the Carpenters Executive Council, and see that all provisions of this agreement are strictly enforced.

ART. VIII. The properly credentialed agents of the party of the second part shall have access to any work under construction by the parties of the first part during working hours.

ART. IX. The party of the first part agrees to hire none

but union carpenters in good standing, carrying the current working card issued by the Carpenters Executive Council. In cases of a company of contractors only one member of the firm will be allowed to work with tools.

ART. X. A sympathetic strike when ordered to protect the union principles herein laid down shall not be a violation of this agreement.

ART. XI. The party of the first part shall not be allowed to lump, piece out, or sublet any of his carpenter work; neither shall any journeyman who is a member of any association represented in the Carpenters Executive Council be permitted to take piecework in any shape or manner.

ART. XII. Any violation of the provisions of this agreement by the party of the first part shall be considered a just cause by the party of the second part for ordering all carpenter work to cease.

In these articles "practically every clause was a covenant on the part of the employer to do certain things. The union placed themselves under virtually no obligations, and the only penalty clause in the contract was one declaring that any violation of its provisions by the employer should be considered a just cause for the ordering of a strike."[1] This will serve as an example of what a real joint agreement ought not to be, as it is so evidently one-sided. It illustrates forcibly what has been said about the importance of combination among employers, that they may bargain on terms of equality with the unions. The T. Nicholson & Sons Company was an unorganized firm, quite in the power of the well-organized carpenters, and the natural result is seen in this agreement, and in the note of January, 1900, sent to the various contractors: —

[1] *Report of the Industrial Commission*, vol. xvii. p. 384.

DEAR SIR: — We beg to inform you after April 1, 1900, the demands of the carpenters will be for a minimum wage scale of fifty (50) cents per hour. We will be prepared to receive signatures to our new agreement after March 1.

Respectfully yours,

CARPENTERS EXECUTIVE COUNCIL,
per Luke Grant, *Secretary.*

Dictation by the employer, once the rule, has given place here to dictation by the union.

An agreement that bears the marks of actual bargaining in the imposition of duties upon both parties to it is that which the New York City Brotherhood of Electrical Workers No. 3 made in 1900 with individual contractors. I give the form from vol. xvii. of the Industrial Commission Report (p. 415), as a specimen of a collective agreement between a single employer and a local union.

It is hereby agreed, by and between —— (contractors), party of the first part, hereinafter called the contractor, and the Brotherhood of Electrical Workers No. 3, of New York, party of the second part, hereinafter called the union: —

First. That this agreement shall apply only to all electrical work undertaken by ——, the contractor, within the territory covered by a radius of twenty-five miles, with New York City Hall as its centre.

Second. That this agreement shall go into effect May 1, 1900, for a period of two years, to May 1, 1902, and if any change is contemplated by either party at its termination, notice in writing shall be given by the party contemplating the change, stating fully what the proposed change is, at least three months prior to the expiration of the agreement, such notice to be legally served upon the other party, and that if no such notice is received at least three months prior to the expiration of this agreement it shall continue

in force for another year subject to another similar three months' notice.

Third. Any contractor signing this agreement shall employ No. 3 men exclusively on all electrical construction work undertaken by said contractor within the twenty-five mile limit.

Fourth. In the event of a dispute, a conference shall be held by a committee within twenty-four hours after notice is served, consisting of three union electrical contractors employing No. 3 men chosen by the contractor, and three members of the union, who shall endeavor to adjust the same. A failure to attend conference within twenty-four hours shall be considered a violation of this agreement. Expenses of this committee shall be borne by the party against whom the decision is rendered. A fine of $50 shall be imposed upon the party found guilty at the conference or on decision of umpire.

Fifth. All applicants for membership, or for helper's examination for journeyman, shall be obliged to pass an examination by a board of examiners, composed of union journeymen.

Sixth. That as all differences under this agreement are to be settled by arbitration, no strike or lockout shall be ordered by either party hereto, it being understood, however, that any sympathetic strike or lockout, in which either party is obliged to take part on account of its affiliation with any central body of employees or employers, shall not be considered a violation of this agreement. It is also agreed that the contractor shall during such sympathetic strike hire no new men until the striking men are employed first. The union reserves the right to refuse to work on any job where other than members of this union are employed on electrical work.

Seventh. That no rules or by-laws shall be made or continued in force by either party which in any way conflict with the provisions of this agreement.

Working rules to be observed by both parties : —

Rule 1. The hours of labor shall be eight hours per day, to be performed between the hours of 8 A. M. and 5 P. M. for five days per week, and from 8 A. M. to 12 noon on Saturdays.

Rule 2. That all work done between 12 M. and 5 P. M. on Saturdays be paid for at double the rate of wages.

Rule 3. Any labor performed before 8 A. M. or after 5 P. M. shall be paid for at double the regular rate of wages. All labor performed on Sundays and all legal holidays shall be paid for at double the regular rate of wages.

Rule 4. Workmen shall be classified as follows : —

Journeyman. — A man who has worked five years at the trade and who has successfully passed examination provided herein and has been admitted to the union.

A helper is a member who has passed an examination for work specified by the union and has worked two years at the trade.

An apprentice is a boy registered by the union, who is employed to do errands, carry material to or on job, attend lockers, and assist journeymen in testing, but for no other purpose; apprentices must not encroach on the work of helpers or work with tools.

An applicant for apprentice card must be under 19 years of age. He must serve with union apprentice card for two years, or equivalent thereto, satisfactorily to the union.

All apprentices must report to the union quarterly for renewal of cards, or to the executive board of the union in case of change of employer. Any failure to comply with above rule forfeits apprentice card. Each shop is entitled to one apprentice. Shops having more than ten journeymen are entitled to one apprentice additional for each additional ten journeymen.

Rule 5. Each contractor is entitled to place one helper to each two journeymen on each job.

Rule 6. Helpers may do journeyman's work while actually helping such journeyman, but must never work alone on any job or part of a job.

Rule 7. All members of the union shall be paid weekly in United States currency and before 5 P. M., and when pay day is on Saturday, before 12 M. noon, and not more than three days' pay shall in any case be held back in any one week.

Rule 8. In going from the shop to his work, or from his work to the shop, or from job to job, each workman shall receive from his employer the necessary car-fare.

Rule 9. Manhattan Island south of One Hundred and Fifty-fifth Street, and Brooklyn within the old city line shall be known as the city district. Outside of the city district workmen shall be allowed travelling time and expenses.

Rule 10. From May 1, 1900, to May 1, 1902, the wages of the journeyman shall be $4 per day of eight hours, from 8 A. M. to 5 P. M., for five days in a week, and $2 for four hours on Saturday, from 8 A. M. to 12 noon.

Rule 11. The foreman shall receive fifty cents per day in excess of the pay of a journeyman.

A foreman. — Any member having charge of construction shall be classed as a foreman.

Rule 12. The pay of the helpers shall be at the rate of $2.50 per day of eight hours, five days in a week, and $1.25 for four hours on Saturday, from 8 A. M. to 12 noon.

Rule 13. When employees are laid off they shall receive their wages in full on job at time of laying off, or at the office before 5 o'clock, in the employer's time.

It is a step upward in the development of collective bargaining when the employers are organized, as well as the workmen. Then an agreement may be made that can more properly be called a collective agreement, in the full sense of the term. A good example is the two local agreements between the Master Carpenters Exchange of Cincinnati and the Hamilton County Carpenters District Council.[1]

[1] *Report of the Industrial Commission*, vol. xvii. p. 385.

It is hereby agreed by and between the undersigned, the Master Carpenters Exchange, parties of the first part, and the Hamilton County Carpenters District Council, parties of the second part, and by each and all of its members: —

1st. That from March seventeenth (17th) to June first (1st), 1900, nine hours shall constitute a day's work, and that the minimum rate of wages shall be twenty-five (25) cents per hour.

2d. That from June first (1st), 1900, to March first (1st), 1901, eight (8) hours shall constitute a day's work, and that the minimum rate of wages shall be thirty (30) cents per hour, and that the better class of mechanics are to receive a higher rate of wages.

3d. That time and one half shall be allowed for overtime, and double time for Sundays, 4th of July, and Christmas, or days that may be celebrated for them. No work shall be allowed on Labor Day, which shall be the first (1st) Monday of September.

4th. That working hours shall be from eight (8) o'clock A. M. to twelve (12) o'clock M., and from one (1) o'clock P. M. to five (5) o'clock P. M. Except that during the months of November, December, January, and February, the hours shall be from seven-thirty (7.30) A. M. to twelve o'clock M., and from twelve-thirty (12.30) o'clock P. M. to four (4) o'clock P. M.

5th. That the parties of the second part hereby agree and bind themselves to faithfully enforce the above conditions as to hours and wages upon building firms that may not be members of the organization of the first part, and that any proven violation of this part of the agreement shall lay all contracts in this connection liable to be declared void.

It is hereby agreed by and between the undersigned, the Master Carpenters Exchange of Hamilton County, parties of the first part, and the Hamilton County Carpenters' District Council, parties of the second part, and

by each for all its members, that, in order to prevent any violation of the agreement relative to hours, wages, and conditions, as agreed to and signed by both parties as aforesaid, there shall be a permanent committee appointed by the above-named exchange and council, consisting of an equal number from each, whose duties shall be to mutually adjust all matters of differences or violations of the agreement that may occur from time to time.

It is also agreed that should any member of any carpenters' union offer his services as a journeyman carpenter to any member of the exchange for less than the rate of wages already agreed on between the exchange and council, or shall rebate, or offer to rebate, any part of his wages to his employer, or any one acting for his employer, the employer shall secure the name and address of the offender and submit it, with the evidence in the case, to the committee of his exchange. The committee of the exchange shall as soon as possible call a meeting of the combined committee of the exchange, together with the committee of the council, for the purpose of consultation, after which the case shall be left with the committee of the council for settlement.

It is also agreed that should any members of the parties of the second part know of any members of the parties of the first part using any effort or offering to employ any parties of the second part for less than the rate of wages agreed on, the committee of the council shall immediately notify the committee of the exchange of the violation, with the evidence in the case, and call a meeting of the joint committee for the purpose of adjusting the matter as soon as possible.

It is also agreed by and between the members of the exchange and council, to work together for the mutual benefit of the entire membership of both, and it is hereby agreed that the members of the exchange employ members of our locals connected with our council, or those who are satisfied to join them.

The council on its part agrees to furnish men to the mem-

bers of the exchange at all times in quantities desired whenever possible to do so.

An excellent instance of a local collective agreement running for a five-year period is that into which the Master Plumbers and the Journeymen Plumbers of St. Louis entered in 1899.[1] Plumbers often make agreements for more than one year.

1. The hours of labor will be from 8 A. M. until 5 P. M., with one hour for dinner. Saturdays from 8 A. M. to 12 M. It is expressly understood that the employee will not quit work before the time specified herein. The wages will be $4 per day for journeymen, except Saturdays, for which the wages will be $2 for the half day. Wages are due and payable on each Saturday at office of employer within one hour after quitting-time. This clause to go into effect the first day of January, 1900.

2. All overtime to be paid for at time and one half. Overtime after 12 o'clock M. and all Sundays and the following holidays to be paid for as double time: January 1, July 4, Labor Day, Thanksgiving Day, and Christmas Day.

3. Journeymen sent outside of the city to work shall be subject to all the conditions of this agreement, and in addition thereto shall receive their railroad fare and board paid, and when travelling at night over 100 miles, sleeper is to be furnished. Travel during Sundays and week days to be at single time (regular rate) and no pay for night travelling. It is further agreed that master plumbers may hire plumbers belonging to a local union, in the place they may have work, at the local union wages.

4. All car-fare in excess of what it would cost to go to and from shop to be paid by employer. It is expressly understood that journeymen shall go direct from their homes to their work, except on such occasions as when material is required, or for consultation with employer.

[1] See the *Report of the Industrial Commission*, vol. xvii. pp. 390, 391.

5. No general strike shall be ordered in a shop by any officer of the Journeymen Plumbers Association without first submitting grievance to the joint conference committee. The decision of a majority of said committee shall be binding on both parties. The chairman of conference board shall call a meeting at some regularly appointed place within twenty-four hours of the time that grievance is submitted to him.

6. It is expressly understood that no member of the Journeymen Plumbers Association will work in any building where any person or firm proposes to or does set up any plumbing material or plumbing fixture not furnished by their employer.

7. It is expressly understood and agreed that the parties to and of this agreement will not handle or put in the following goods, viz.: Drum traps with outlets or screws attached, lead pipes with ferrules or soldering nipples, lead-pipe couplers, rubber vent connections, long traps with ferrules attached, same to cover all sizes. Joints on couplings and ferrules to be wiped in all cases. All soil-pipe joints to be calked with oakum and lead in all cases. A rust joint may be used. All bath-tub traps that are placed under floor to be drum traps, same to be made by plumber.

8. The members of the Journeymen Plumbers Association will not work for any one under any circumstances for less than the regular rate of wages agreed upon in this agreement. All violations of this article shall be in charge of the joint conference committee of both associations.

9. A sympathetic strike when ordered by the Building Trades Council will not be considered a violation of this agreement; the master plumber to have sufficient notice to protect his material.

10. There will be no more new apprentices or juniors hired during the term of this agreement, but all apprentices who are registered by the joint association shall be permitted to complete their time, which will be five and a half years, and at the expiration of same shall receive journeymen's wages, but in no case shall there be more than one apprentice

employed in a shop at one time. It is also expressly understood that the employer shall have complete control of the apprentice during his term of apprenticeship. The joint association pledge themselves to do all in their power to advance the mental, moral, and mechanical education of its enrolled apprentices. This clause may be changed or modified when the national joint apprenticeship committee passes a national apprenticeship law.

11. In no case shall a plumber be employed without having a clear card, or provisions made for one, by employer. In no case shall an apprentice be employed where journeymen are not employed. In no case shall apprentices be in a majority.

12. It is agreed that when the joint conference board is not satisfied that this agreement is being strictly lived up to, said board shall have power to cause such investigation as they see fit. The finding of said board on all matters shall be final and binding on both associations.

13. Only one (1) member of a firm will be allowed to handle tools, and he shall have in his possession, when engaged in work, a card issued by the joint conference board. Any master plumber working on job where men have been called out, unless he shall have received permission from the conference board, shall be declared unfair.

14. No member of the Journeymen Plumbers Association shall work for any other than a member in good standing of the Association of Master Plumbers, and no member of the Association of Master Plumbers shall employ others than members in good standing of the Association of Journeymen Plumbers.

15. The conference board shall consist of three members of each association and the presidents of same, who shall be empowered to vote. Whenever a member of the conference board becomes a prosecutor or a defendant, he shall temporarily vacate his seat, and his place shall be filled by some other member of his organization, or by proxy vote placed with one of his colleagues.

16. This agreement in duplicate form shall receive the signatures of the officers and seals of both associations and shall become effective when so signed and remain so for a period of five years until the 18th of September, 1904.

17. A copy of this agreement shall be conspicuously displayed in each shop where said board has jurisdiction.

Next in the order of evolution of collective agreements, we meet the agreement between a national union and an association of employers which is more than local, but not national in its scope. We can illustrate this phase by the very successful agreement between the International Longshoremen's Association and its local organizations in Cleveland, Ohio, and the Association made up of the managers of coal and ore docks in the lower Lake Erie ports of Ohio, Pennsylvania, and New York. The general agreement is followed by one of the special exhibits, given as a specimen of the scales and conditions governing the separate unions.[1]

AGREEMENT made and entered into at Cleveland, Ohio, the fifteenth day of March, 1901, by and between the International Longshoremen's Association, by its officers duly authorized, and the respective local organizations thereof, by their duly authorized officers, who have attached their names to this agreement as first party, and the Dock Managers, owning docks at the lake ports, who have attached their names to this agreement as second party.

WITNESSETH:

1. This agreement is made for the season of navigation of 1901.

2. There are attached hereto, as a part of this agreement, schedules of wages marked Exhibits "A," "B," "C," "D,"

[1] See *Report of the Industrial Commission*, vol. xvii. pp. 371, 372.

and "E," and made part hereof. Said schedules of wages and all provisions therein contained are to be respected by all the parties hereto, and are hereby agreed to for the year 1901, as set forth in said respective schedules. The scale of wages for hoisters and engineers to begin, as stated in the schedule referring thereto, on May 1st, 1901.

3. All employees employed by the Dock Managers for the purpose of performing the work set forth in the schedules hereto attached shall be members of the local organizations, whenever such men can be had who can perform the work as called for in the contract; when such men cannot be had, the Dock Managers have the right to secure any other men who can perform the work in a satisfactory manner until such time as members of the International Longshoremen's Association can be secured; that no man shall be discharged without just cause, and be notified of the cause of the discharge.

4. The Dock Managers or Owners shall at all times give to the men interested an opportunity to inspect bills of lading or orders for receiving cargoes for the purpose of learning or verifying the tonnage to be loaded or unloaded.

5. It is understood that occasionally, when any unusual work arises in isolated cases not covered by this agreement, the men, when called upon, shall perform such labor, and the compensation therefor shall be determined and adjusted between the representatives of the local organizations and the Dock Managers and Owners, and, in the event of any disagreement, shall be arbitrated as hereinafter provided for the arbitration of differences, controversies, or grievances.

6. All items not mentioned in this contract or the schedules hereto attached shall be performed, and all payments shall be made for work done under this agreement in accordance with the usual custom heretofore prevailing upon the respective docks.

7. In the event of any controversy arising between the men or local organizations and the Dock Managers or Owners, or in the event of any of the men or local organi-

zations having any grievances, the men shall continue to work, and any and all such controversies and grievances shall be settled, if possible, by the representative of the local organization and the representative of the Dock Managers or Owners. If such controversies and grievances cannot be so settled, then they shall be arbitrated, by choosing a third disinterested man upon whom the representatives of the local organizations and the Dock Managers or Owners shall agree, and the decision of any two shall be final. If the representative of the local organization and representative of the Dock Managers or Owners cannot agree upon a third man, then each side shall choose a disinterested man, and the two disinterested men thus chosen to choose a third disinterested man, and said three men shall constitute a board of arbitration, and the decision of a majority of said three shall be final and all parties shall abide thereby. It is expressly agreed that said arbitration board shall meet within ten days after the occurrence of the difference requiring arbitration.

8. It is distinctly understood between the Dock Managers and the representatives of the International Longshoremen's Association that no beer, whiskey, or other intoxicating liquors shall be brought upon the property of the Dock Managers.

9. It is also distinctly understood that no men in an intoxicated condition or under the influence of liquor shall be permitted upon the property of the Dock Managers.

10. That none of the companies' employees employed by the hour or month shall be permitted to leave the dock during working hours without permission, nor tonnage men when labor is to be performed.

11. Pure and fresh drinking water with oatmeal and ice shall be provided on the dock where the men are employed.

12. When a Local at any dock quits or refuses to work on a vessel, it shall be considered a violation of contract, and the vessel may be sent to any other dock or port governed by this agreement, where she shall be discharged or

finished, under the rules of this contract, in the same manner as though she had originally been consigned there; and the men so finishing the cargo shall receive the entire pay for discharging or loading all of the cargo of said vessel, and the men so refusing to work on said vessel shall be discharged, with the provision that this section applies only to docks covered by this agreement.

EXHIBIT A.

We, the representatives of the Locals of Ore Shovelers, do hereby agree and accept the scale and conditions for the navigation season of 1901: —

1st. From the opening of navigation to September 14th twelve hours shall constitute a day's work, and from September 15th to the close of navigation eleven hours shall constitute a day's work.

2d. That the price to be paid for unloading ore, pig iron, limestone, and alabaster rock from vessels shall be 13 cents per ton.

3d. That 25 cents per hour shall be paid for overtime.

4th. That the price that shall be paid for loading ore from dock by machine shall be 7½ cents per ton at all ports, except T. and O. C. Dock, Toledo, where 10 cents shall be paid.

5th. That the price that shall be paid for loading ore from dock by hand shall be 9½ cents per ton, except Sandusky, 12½ cents, and T. and O. C. Dock, Toledo, 11 cents.

6th. That the price that shall be paid for transferring ore and pig iron from cars to dock shall be 19 cents per hour.

7th. All day work shall be paid for at the rate of 19 cents per hour, overtime 25 cents per hour additional.

8th. That gang bosses shall be selected by the superintendent of the dock. It is understood that they be members of the I. L. A.

9th. Where vessels come to the dock with water in the

hold, and it is necessary for some men to lay off on account of water, such men shall be paid at the rate of 50 cents per hour until such water is freed, the understanding being that no boat shall be considered wet unless the water is 1½ inches deep in the centre of the majority of the hatches being worked, after room has been made to take care of three buckets on the bottom; and where boat is being worked on the wing, water must average 4 feet or more from the wing before any action shall be taken in regard to vessel being considered wet. The idle men shall be distributed over hatches to enable vessel to work to the best advantage. The men shall return to work at regular rate as soon as water is below skin. Where it is impossible to free a vessel from water in two hours after the water has been discovered, double tonnage shall be paid on balance of the cargo.

10th. Legal holidays shall mean Decoration Day, Fourth of July, Labor Day, and Thanksgiving Day. No other holidays to be recognized.

11th. That there shall be no work on Sundays or legal holidays unless vessels are in a wrecked condition and water in the hold, and then double tonnage shall be paid and overtime at the rate of 25 cents per hour to each man employed.

12th. In cases where men are taken from the boat when working in vessel to load cars on dock, they shall receive the same scale as earned on the boat.

13th. The turn of the gangs shall be as follows: First gang unloaded shall be the first gang in; the time to be taken by the superintendent of the dock or his representative, as to the finishing of the vessel. His decision shall be final and binding on the gang.

14th. That 25 cents per hour shall be paid to the gang doing the work for moving machinery over turntable from the time first leg gets within 100 feet from turntable until last leg has passed over turntable.

15th. At all ports where business of the dock is greater than day gang can handle, double shifts can be worked at the regular scale of wages for day work.

16th. Overtime shall be worked on all docks where required by the superintendent.

A farther logical development in collective bargaining is seen when an agreement is made between a national association of manufacturers, on one side, and a national trade-union, on the other. Dr. Durand gives to such an agreement which has existed since 1891 between the Stove Founders National Defense Association and the Iron Molders Union of North America, the credit of being "one of the most effective systems of collective bargaining and arbitration to be found in any trade." I insert the substance of it as it is now in force, omitting the preamble and some minor articles. It will be observed that it does not give a detailed scale of wages, but includes only general stipulations as to the manner in which wages and hours and other conditions shall be regulated.

Resolved, That this meeting adopt the principle of arbitration in the settlement of any dispute between the members of the I. M. U. of N. A. and the members of the S. F. N. D. A.

That a conference committee be formed consisting of six members, three of whom shall be stove molders appointed by the Iron Molders' Union of North America, and three persons appointed by the S. F. N. D. A., all to hold office from May 1 to April 30 of each year.

Whenever there is a dispute between a member of the S. F. N. D. A. and the molders in his employ (when a majority of the latter are members of the I. M. U.) and it cannot be settled amicably between them, it shall be referred to the presidents of the two associations before named, who shall themselves or by delegates give it due consideration. If they cannot decide it satisfactorily to themselves they

may, by mutual agreement, summon the conference committee, to whom the dispute shall be referred and whose decision by a majority vote shall be final, and binding upon each party for the term of twelve months.

Pending adjudication by the presidents and conference committee, neither party to the dispute shall discontinue operations, but shall proceed with business in the ordinary manner. In case of a vacancy in the committee of conference, it shall be filled by the association originally nominating. No vote shall be taken except by a full committee, or by an even number of each party.

Apprentices should be given every opportunity to learn all the details in the trade thoroughly, and should be required to serve four years. Any apprentice leaving his employer before the termination of his apprenticeship should not be permitted to work in any foundry under the jurisdiction of the I. M. U. of N. A., but should be required to return to his employer. An apprentice should not be admitted to membership in the I. M. U. of N. A. until he has served his apprenticeship and is competent to command the average wages. Each apprentice, in the last year of his apprenticeship, should be given a floor between two journeymen molders, and they, with the foreman, should pay special attention to his mechanical education in all classes of work.

The general rate of molders' wages should be established for each year without change.

When the members of the Defense Association shall desire a general reduction in the rate of wages, or the Molders Union an advance, they shall each give the other notice at least thirty days before the end of each year, which shall commence on the first day of April. If no such notice be given, the rate of wages current during the year shall be the rate in force for the succeeding year.

The present established price of work in any shop should be the basis for the determination of the price of new work of similar character and grade, unless the presidents of the two organizations, or their representatives, shall decide that the

established prices of similar work in the shop are not in accord with the price of competitive goods made in the district.

Any existing inequality in present prices of molding in a foundry or between two or more foundries should be adjusted as soon as practicable upon the basis set forth in the foregoing paragraphs, by mutual agreement or by the decision of the adjustment committee provided by the conference of March, 1891.

Stove manufacturers, members of the S. F. N. D. A., shall furnish in their respective foundries a book containing the piece-prices for molding, the same to be placed in the care of the foreman of the foundry and a responsible molder, agreeable to both employer and employees, said book to be placed in a locker on molding floor, to which the foreman and the molder so elected shall each carry a key.

New work should always be priced within a reasonable time, and under ordinary circumstances two weeks would be considered a reasonable time, and such prices, when decided upon, should be paid from the date the work is put in the sand.

The members of the S. F. N. D. A. shall furnish to their molders: Shovels, riddles, rammers, brushes, facing-bags, bellows and strike-off, provided, however, that they charge at actual cost tools so furnished, and collect for the same, adopting some method of identification; and when a molder abandons the shop, or requires a new tool in place of one so furnished, he shall, upon the return of the old tools, be allowed the full price charged, without deducting for ordinary wear; and damage beyond ordinary wear to be deducted from amount to be refunded.

Whenever a difficulty arises between a member of the S. F. N. D. A. (whose foundry does not come under the provisions of Clause 3, 1891 conference) and the molders employed by him, and said difficulty cannot be amicably settled between the member and his employees, it shall be submitted for adjudication to the presidents of the two organizations,

or their representatives, without prejudice to the employees presenting said grievance.

In pricing molding on new stoves when there are no comparative stoves made in the shop, the prices shall be based upon competitive stoves made in the district; thorough comparison and proper consideration being given to the merits of the work according to labor involved.

The general trend of industrial development is towards employing skilled labor as far as practicable, at skilled work, and in conformance with this tendency, every effort should be made by the members of the S. F. N. D. A. and the I. M. U. of N. A. to enable the molder to give seven hours of service per day at molding, and to encourage the use of unskilled help to perform such work as sand cutting, and work of like character, when the molder can be given a full day's work.

Inasmuch as it is conceded by the members of the S. F. N. D. A. that the earnings of a molder should exercise no influence upon the molding price of work, which is set, according to well-established precedent and rule of conference agreements, by comparison with other work of a like kind, the placing of a limit upon the earnings of a molder in the seven hours of molding, should be discountenanced in shops of members of the S. F. N. D. A.

When a full floor of new work is given a molder he should be guaranteed the day-work rate of pay for the first day, in order that he may be given an opportunity to get the job in good running order for piece work; if, however, the molder should earn more than the day-work rate he should be paid his full earnings.

Where a change of job is made the molder often loses considerable time and is put to great inconvenience through the necessary clamps, boards, and other facilities needed for the job not being supplied to him promptly. We believe that in well-regulated shops that should be made a feature of the shop management and should be a subject of favorable recommendation to the members of the S. F. N. D. A.

"The principle of arbitration" mentioned in the first clause is essentially the principle of collective bargaining. The second clause at once proceeds to define and establish the machinery for such bargaining. In a later chapter we shall distinguish more accurately than popular usage and many of these collective agreements do between conciliation, arbitration, and collective bargaining. All the agreements given in this chapter are instances of collective bargaining as the main matter, whatever they contain in the way of reference to arbitration or conciliation.

Before presenting instances of agreements from the coal trade (the Interstate and the Illinois contracts), which are perhaps the most impressive American examples of this modern style of bargaining, we may do well to note the naturalness of the development from local to national collective agreements, as shown specifically in the printing business. The late Mr. S. E. Morss, editor and manager of the Indianapolis "Sentinel," in a letter appended to the Report of the Anthracite Coal Commission (p. 237), wrote that, "The 'Sentinel' was one of the first newspapers in the country, if not the very first, to enter into a time contract with the local typographical union. When I purchased an interest in this paper on February 1, 1888, a strike of printers in the morning newspaper offices had recently taken place, and all the daily papers in the city were set up by non-union printers. One of the first things I did was to have a conference with the officers of the local typographical union. The Sentinel Company made a contract with the union which was, I believe, to run a certain length of time, — three years, I think. A few months later the other daily papers of

the city made similar contracts with the union, and subsequently the newspapers of the city formed a publishers' association for the purpose of dealing with the labor unions, and contracts are now made from time to time between the publishers' association and the local typographical union.[1] The results have been en-

[1] I will insert here a similar agreement between the Typothetæ (the master printers) of Chicago and the Chicago Typographical Union, No. 16: —

For the purpose of establishing a just and uniform scale of wages for the members of the Chicago Typographical Union, No. 16, to devise a means for the settlement of controversies between the members of said union and their employers, and to insure to the employers a settled rate of wages for a certain period of time, and also in order that strikes and lockouts may in the future be avoided, this agreement, by and between the Chicago Typothetæ and the Chicago Typographical Union, No. 16, both of the city of Chicago, in the county of Cook and State of Illinois, is made and entered into on this 3d day of June, 1902.

It is understood that the said Chicago Typographical Union, No. 16, is an association of employees, and that said Chicago Typothetæ is composed of various firms and corporations, and that all of said members of said Typothetæ who shall sign this agreement bind themselves to pay to their employees wages according to the schedule herein set forth, and to conform to all the terms and conditions of this agreement; and that should any other firm or corporation not signing this agreement become a member of said Typothetæ hereafter and shall sign this agreement, such firm or corporation shall become equally bound to pay said scale of wages and conform to all of the terms of this agreement; and that should any other firm or corporation not a member of said Typothetæ sign this agreement, such firm or corporations shall become equally bound to pay said scale of wages and to conform to all the conditions of this agreement.

The said Typothetæ, for and on behalf of said firms and corporations, covenants and agrees to and with said union, and to and with each member thereof, that the following is and shall be the schedule of wages in force and to be paid to the members of said union while in the employ of the members of said Typothetæ signing this agreement, or any other of the firms and corporations signing this agreement.

All firms signing this agreement hereby bind themselves to employ none but members of the Chicago Typographical Union, No. 16, in

tirely satisfactory. . . . Similar arrangements have been in force in other cities for several years, and finally

departments covered by this scale of wages during the term of this contract, provided the union is able, upon call, to furnish a competent workman.

On and after the 1st day of July, A. D. 1902, the following shall be the scale of wages : —

Hand compositors and proof readers, week of fifty-four hours	$19.50
Hand compositors and proof readers, night work, week of forty-eight hours	20.70
Mergenthaler operators, week of forty-eight hours	24.00
Mergenthaler operators, night work, week of forty-eight hours	26.40
Lanston operators and casters, week of fifty-four hours	21.00
Lanston operators and casters, night work, week of forty-eight hours	22.00
Operators and justifiers on the Empire, Thorne, Simplex, and similar machines, week of fifty-four hours	20.50
Operators and justifiers on the Empire, Thorne, Simplex, and similar machines, night work, week of forty-eight hours	21.50
Piece composition, hand, per thousand	.42
Mergenthaler, sizes not exceeding brevier, day work, per thousand	.12
Mergenthaler, sizes not exceeding brevier, night work, per thousand	.14
Mergenthaler, larger than brevier, day work, per thousand	.15
Mergenthaler, larger than brevier, night work, per thousand	.17
For composition during noon intermission and after day's work is completed (the day to close not later than 6 o'clock P. M.), until 10 o'clock P. M., per hour	.55
From 10 o'clock P. M. to 7 o'clock A. M., per hour	.65
After completion of week's work until 7 o'clock Sunday morniug, per hour	.65
Work done on Sundays and recognized holidays, per hour	.72

All overtime on machines to be paid at the rate of one and one half times the regular scale.

All work performed on Sundays and recognized holidays to be paid at the rate of twice the regular scale.

All other special prices for overtime and special scales for extra-price bookwork to be the same as in the pamphlets entitled "Job and Book Scale of Prices," in effect November 21, 1899, and "Auxiliary and Job Scale of Prices for Linotype Machines," in effect September 19, 1898, published by the Chicago Typographical Union, No. 16, and marked Exhibits A and B, respectively, which are hereby made a part of this contract, except those parts thereof that conflict with the provisions of this agreement.

The employers agree to continue to operate under the present law of the Typographical Union in regard to apprentices until such time as the entire question of apprentices shall be arbitrated in accordance with the provisions of arbitration in this agreement.

Should any difference arise between any member or members of said Typothetæ and any member or members of said union, either in

a contract was made last spring [1901] between the American Newspaper Publishers Association on the

regard to shop practice or in regard to the interpretation of this scale, or any special scale that may arise during the life of this contract, then such difference shall without delay be brought to the attention of the officers of the parties hereto, to be submitted to arbitration in the manner hereinafter set forth. Pending the settlement of any differences as aforesaid, this agreement shall in every respect continue in force and the members of said union shall continue in their employment. Should differences or disputes arise in reference to the terms of such settlement, or as to whether the same have been complied with, such differences or disputes shall be left to the arbitrators who arrived at such settlement, and their decision shall be final and binding upon all parties.

No strike shall be engaged in by said union or any members thereof, except a strike in sympathy with the Pressmen's Union, No. 3, or the Franklin Union, No. 4, or the Bookbinders Union, and then only after said Typothetæ, or the member or members thereof against whom said proposed strike is directed, shall have first been given thirty days' written notice by the officers of said union of the intention to engage in such strike. If, however, the Typothetæ or employers signing this agreement shall make a similar contract with the Pressmen's Union, No. 3, Franklin Union, No. 4, and Bookbinders Union, in which these unions agree not to engage in any sympathetic strike, the Typographical Union, No. 16, will make the same agreement. [The contract mentioned in this sentence, I am informed by the secretary of the Typothetæ, has not been made, because the national agreement between the United Typothetæ of America and the International Printing Pressmen's and Assistants Union debars subordinate unions of pressmen from engaging in sympathetic strikes of any character. This renders a contract with the Pressmen's Union, No. 3, needless, and the remainder of the proposal has naturally lapsed for this reason.]

It is understood that this agreement shall be amended so as to conform in the matter of sympathetic strikes to future agreements that may be made between kindred organizations mentioned above and the Chicago Typothetæ.

Any employer signing this agreement having altercations with the Mailers Union, Photo-engravers Union, Stereotypers Union, Newswriters Union, or the Type Founders Union, also agrees to refer such altercations to arbitration in the same manner as if the altercation was with the members of the Typographical Union, No. 16.

This agreement and scale of wages to remain in force until July 1, 1905.

one hand, and the International Typographical Union and the International Printing Pressmen's Union on the other.[1] The contract was ratified by a substantially unanimous vote of the Newspaper Publishers Association. I think the general feeling is that these arrangements afford the best method available under existing conditions of regulating relations between newspaper publishers and the employees in their mechanical departments."

The most striking instance of collective bargaining on a large scale, in this country, is the joint agreement between the United Mine Workers, the miners, and the Bituminous Coal Operators, of Western Pennsylvania, Ohio, Indiana, and Illinois. The operators are not organized into one association, but sign the agreements by two representatives from each State or district; the miners' assent is signified in the same way, and the United Mine Workers sign by their president and secretary. This method has been in force in the coal industry since December 27, 1897. The annual joint conference between the coal miners and the operators is not so formal a meeting, perhaps, as those in the English coal and iron industries,[2] where the system of "conciliation boards" has been carried to its highest perfection, but it is one of the most interesting meetings of workingmen and employers to be witnessed

This agreement is understood as not to act as a bar to Chicago Typographical Union, No. 16, participating in a movement for shorter work-day, providing such movement is agreed to by the United Typothetæ of America and the International Typographical Union.

[1] A similar contract with the Pressmen's Union will be found in chapter xi., as it deals mainly with conciliation and arbitration.

[2] Annual meetings are to be recommended in all industries, and the least formality consistent with the dispatch of business is the best policy.

in this country. The two parties generally meet in Indianapolis in January, immediately after the annual meeting of the United Mine Workers, each conference making its own rules and issuing a call for the succeeding conference. These rules have been substantially unchanged thus far, having been copied from the conferences of the individual States. The miners send a large number of delegates to the convention (in 1901 there were 499; in 1903, 419); the operators are represented by a smaller, but also considerable number (in 1901 there were 182).[1] The main work of the convention could not well be done on the floor, with so many members; it therefore falls into the hands of a Scale Committee of thirty-two members, each side having four votes from each State in this committee. On all committees the miners and the operators have an equal number of votes, so that the difference of numbers on the floor is not important. The members of a committee are chosen by the side which they are to represent.

The convention sits in the morning from 9 A. M. to 12 M., and in the afternoon from 2 P. M. to 5 P. M., evening sessions being held, if necessary. The miners' representatives sit on the right side of the hall, and the operators' representatives on the left side, facing the stage. No motion is to be declared carried unless there is a majority of the miners and the operators of each State in favor of it. Each State is allowed four votes on behalf of the operators and four on behalf of

[1] In all collective bargaining it is usually desirable to have a large representative body rather than a small one. The result will be more readily accepted by the whole trade, and the conference will have more of an educating effect.

the miners.[1] In no event shall the rule requiring a unanimous vote on all "main and principal" questions be suspended. "Main and principal questions" include all questions affecting the proposed scale and the collective agreement. The sessions of the convention are, as a rule, open to the public. (The use of tobacco in the hall is prohibited during the convention, according to the eighth rule.)

The task of forming a new agreement for the coming year is referred to the Joint Scale Committee, who in turn usually refer the question of the rate of wages to a sub-committee of sixteen members. This committee reports to the convention from time to time, as it makes progress, and unsettled questions are discussed in the convention, and then sent back to the committee. But when the Joint Scale Committee has finally reported, its report is usually adopted unanimously, without change. This committee holds its meetings in a small room or hall, the members sitting around a common table, and a great deal of informality marks the discussions.

Theoretically it would be supposed that the requirement of a unanimous vote in the committee and in the

[1] The commissioners representing the operators' associations of the various States, the officials of these associations, and the officials of the miners' organizations are usually admitted to "a seat and a voice" in the convention, and in the meetings of the Scale Committee. "By some unwritten law of our conferences," said Mr. John Mitchell at the morning session of January 30, 1903, "a rule seems to have been established that the president of the miners' organization is expected to make a preliminary statement defining in substance the position of the miners, before we commence the active work of the convention." He then read five propositions from the miners' side, based upon the fact that "we feel confident that you will be willing to grant us increased wages and improved conditions of employment this year."

convention would render it impossible to come to any decision in either body. But practically it is not very hard to arrive at this goal, and the proceedings, though animated at times, are far from resembling those of the Russian *Mir* so graphically described by Stepniak, where a unanimous agreement is always reached in the end.[1] The usual practice at Indianapolis is for both sides to begin by making extreme demands, which are beaten down gradually until the two come together. On a large scale, it is the same old story of a private bargain between two persons; at first "'It is naught, it is naught,' saith the buyer." The "higgling of the market," which the Book of Proverbs so well characterizes, finally brings the parties together. At the outset, in the Joint Scale Committee, all the operators begin by voting in favor of their own proposition, and all the miners by voting in favor of their own. "Only after a long discussion is a compromise arrived at. Each point is threshed out carefully. One side presents a proposition in return for one from the other side. The speeches in some cases are acrimonious, but probably each side from the beginning is resolved to make concessions, if necessary, rather than break up without an agreement." Thus we see how easy it is, comparatively, to settle labor questions when the two parties come into close relations, with an equality of numbers and of voting power. They begin the conference with expressions of good will and of great satisfaction over the record of the past conferences. Mr. Mitchell, for example, said in 1902: "I desire to express what I believe to be the sentiment of both

[1] See *Russia under the Tsars*, vol. i. p. 2, quoted by Mr. John Rae in his *Contemporary Socialism*, p. 252.

miners and operators, and that is, that in our joint agreements our relationship has more than justified the fondest hopes of those who started this movement. . . . It is a pleasant tribute to our civilization that men whose interests appear to be irreconcilable can meet in conference and reach an adjustment that at least gives a fair measure of satisfaction to both parties to that adjustment." Mr. Justi soon after, in accepting a correction from Mr. Mitchell, took occasion to say that "There is no man, in this convention or anywhere else, that I would be more unwilling to offend or wrong or place in a wrong light before the public than Mr. Mitchell." However spirited the discussions that follow, in the convention or in the committee, the end is a unanimous acceptance of the report of the committee, and a vote of thanks to the officers of the convention. Such are the results when a rational method has been thus arranged beforehand of adjusting the demands of both parties.

Here follows the Interstate Agreement for the year ending April 1, 1901, renewed in 1901 and 1902.

It is hereby agreed, SEC. 1. (a) That an advance of fourteen (14) cents per ton of two thousand (2,000) pounds for pick mined, screened coal, shall take effect in Western Pennsylvania thin vein, the Hocking, the basing district of Ohio, and the block coal district of Indiana.

(b) That the Danville district, the basing point of Illinois, shall be continued on an absolute run-of-mine basis, and that an advance of nine cents (9 cents) per ton over present prices be paid in the district named.

(c) That the bituminous coal district of Indiana shall pay forty-nine cents (49 cents) per ton, for all mine-run coal loaded and shipped as such. All other coal mined in that district shall be passed over a regulation screen, and be paid

for at the rate of eighty cents (80 cents) per ton of two thousand (2,000) pounds for screened lump.

Sec. 2. That the screen hereby adopted for the State of Ohio, western Pennsylvania, and the bituminous district of Indiana, shall be uniform in size, six (6) feet wide by twelve (12) feet long, built of flat or Akron-shaped bar, of not less than five eighths ($\frac{5}{8}$) of an inch surface, with one and one fourth ($1\frac{1}{4}$) inches between bars, free from obstructions, and that such screens shall rest upon a sufficient number of bearings to hold the bars in proper position.

Sec. 3. That the block coal district of Indiana may continue the use of the diamond bar screen, the screen to be seventy-two (72) feet superficial area, of uniform size, one and one quarter inches between the bars, free from obstruction, and that such screens shall rest upon a sufficient number of bearings to hold the bars in proper position.

Sec. 4. That the differential between the thick and thin vein pick mines of the Pittsburg district be referred to that district for settlement.

Sec. 5. (a) That the price of machine mining in the bituminous district of Indiana shall be eighteen (18) cents per ton less than the pick mining rate for screened lump coal, when punching machines are used; and twenty-one and one half ($21\frac{1}{2}$) cents per ton less than pick mining rate when chain machines are used.

When coal is paid for on run-of-mine basis, the price shall be ten (10) cents per ton less than the pick mining rate when punching machines are used, and twelve and one half ($12\frac{1}{2}$) cents per ton less than pick mining rates when chain machines are used.

(b) That the machine mining rate in the Danville district, the basing point of Illinois, on both punching and chain machines, be thirty-nine (39) cents per ton.

Sec. 6. That the machine mining rate in the thin vein of the Pittsburg district, and the Hocking, the basing district of Ohio, for shooting, cutting, and loading, shall be advanced nine (9) cents per ton. And that the block coal district of

Indiana shall be advanced eleven and one half ($11\frac{1}{2}$) cents per ton.

Sec. 7. That the mining rates in the central district of Pennsylvania be referred to that district for adjustment.

Sec. 8. That the advance on inside day labor be twenty per cent. (20 per cent.), based on the present Hocking Valley scale; with the exception of trappers, whose compensation shall be one dollar ($1.00) per day.

Sec. 9. That all narrow, dead-work and room turning shall be paid a proportionate advance with the pick mining rate.

Sec. 10. That internal differences in any of the States or districts, both as to prices or conditions, shall be referred to the States or districts affected for adjustment.

Sec. 11. The above scale is based upon an eight (8) hour work day.

The foregoing scale having been unanimously adopted by the Interstate Convention of Miners and Operators, at Indianapolis, Indiana, on February 2, 1900, in witness hereof we hereto attach our signatures.

The agreement for the year ending March 31, 1904, was as follows: —

That the Interstate Agreement of the present year be continued with the same conditions for the scale year beginning April 1, 1903, and ending March 31, 1904, with the exception of the mining prices and inside day wages.

That the price for mining be increased ten (10) cents per ton on inch and a quarter screened lump coal, pick mining, in Western Pennsylvania thin vein, the Hocking, the basing district of Ohio, and both block and bituminous districts of Indiana; six (6) cents per ton on mine-run coal, pick mining, in the bituminous district of Indiana, and at Danville, the basing point of Illinois.

That the price for machine mining be increased eight (8) cents per ton on screened lump coal in Western Pennsylvania thin vein, and the Hocking, the basing district of Ohio;

ten (10) cents per ton on screened lump coal in the block and bituminous districts of Indiana, and six (6) cents per ton on mine-run coal in the bituminous district of Indiana and at Danville, the basing point of Illinois.

That the Inside Day Wage Scale shall be as follows, with the conditions of the Columbus Day Wage Scale agreement of 1898, to wit: —

Tracklayers	$2.56
Tracklayers' helpers	2.36
Trappers	1.13
Bottom Cagers	2.56
Drivers	2.56
Trip Riders	2.56
Water Haulers and Machine Haulers	2.56
Timbermen, where such are employed	2.56
Pipemen for Compressed Air Plants	2.50
Company men in Long Wall Mines of Third Vein District, Northern Illinois	2.36
All other Inside Day Labor	2.36

That yardage and dead-work be advanced twelve and one half (12½) per cent.

Two paragraphs from the Chicago agreement of 1898 are of interest. They have not been expressly reaffirmed in later agreements, but I am informed by President John Mitchell, of the United Mine Workers, that they are considered to be still in effect: —

5. That on and after April 1, 1898, the eight-hour work day with eight hours' pay, consisting of six days per week, shall be in effect in all of the districts represented, and that uniform wages for day labor shall be paid the different classes of labor in the fields named, and that internal differences in any of the States or districts, both as to prices and conditions, shall be referred to the States or districts affected for adjustment.

8. That the United Mine Workers' organization, a party to this contract, do hereby further agree to afford all possible protection to the trade and to the other parties hereto against any unfair competition resulting from a failure to maintain scale rates.

The bituminous coal workers have been able to extend the system of annual joint agreements, by State or district conferences, beyond the four States already named, to Alabama, Kentucky, Tennessee, Missouri, Kansas, Iowa, Michigan, and Central Pennsylvania. The immediate ambition of the United Mine Workers and the operators is to bring in West Virginia, which is a dangerous competitor with its cheap negro labor. On the question of including other States, like Michigan and Iowa, within the interstate agreement the miners and the operators are not agreed. In Pennsylvania, Ohio, Indiana, and Illinois annual conferences are held, composed of representatives of the coal miners and the operators, which arrange for the application of the general rules laid down by the Indianapolis conference to the particular needs and demands of the State. The system adopted in Illinois is the most elaborate of these State agreements, binding, as it does, some 40,000 wage-earners. The Illinois coal operators are thoroughly organized, and actively enforce the carrying out of the joint agreements by each operator in the State. This is the agreement in effect for the year beginning April 1, 1903: —

Whereas, A contract between the operators of the competitive coal fields of Pennsylvania, Ohio, Indiana, and Illinois, and the United Mine Workers of America, has been entered into at the city of Indianapolis, Indiana, Febuary 7, 1903, fixing a scale of mining prices, day wages, and con-

ditions for certain base points therein set forth, to continue in force and effect for one year from April 1, 1903; and

WHEREAS, This contract fixes the pick-mining price of bituminous mine-run coal at Danville, at fifty-five cents per ton of two thousand pounds; therefore, be it

RESOLVED, That the prices for pick-mine coal throughout the State for one year, beginning April 1, 1903, shall be as follows: —

FIRST DISTRICT.[1]

Streator, Cardiff, Clarke City, and associated mines, including Tolucca thick vein	$.64
(Note: The matter of the clay parting at Streator to be referred to sub-district convention for adjustment.)	
Third vein and associated mines, including third vein at Streator, including twenty-four inches of brushing	.82
Wilmington and associated mines, including Cardiff long wall and Bloomington thin vein, including brushing	.87
Bloomington thick vein	.77
Pontiac, including twenty-four inches of brushing	.87
Pontiac top vein	.64
Marseilles and Seneca (referred to a joint committee of two miners and two operators for investigation and adjustment of the mining prices and conditions, and their agreement shall become a part of this contract. Said committee to make its investigation and report prior to April 1, 1903)	
Morris long wall, Wilmington conditions	1.06
Morris room and pillar	1.21
Clarke City lower seam, brushing in coal	

[1] The prices for the remaining eight districts of the State are omitted here.

First. The Indianapolis Convention having adopted a mining and underground day labor scale, in effect April 1, 1903, no changes or conditions shall be imposed in the Illinois scale for the coming year that increase the cost of production of coal in any district in the State, except as may be provided.

Second. No scale of wages shall be made by the United Mine Workers for mine manager, mine manager's assistant, top foreman, company weighman, boss drivers, night boss, head machinist, head boiler maker, head carpenter, night watchman, hoisting engineers. It being understood that "assistant" shall apply to such as are authorized to act in that capacity only. The authority to hire and discharge shall be vested in the mine manager, top foreman, and boss driver. It is further understood and agreed that the night watchman shall be exempt when employed in that capacity only.

Third. Any operator paying the scale rate of mining and day labor under this agreement shall at all times be at liberty to load any railroad cars whatever, regardless of their ownership, with coal, and sell and deliver such coal in any market and to any person, firm, or corporation that he may desire.

Fourth. The scale of prices for mining, per ton of 2,000 pounds, run-of-mine coal, herein provided for, is understood in every case to be for coal practically free from slate, bone, and other impurities, loaded in cars at the face, weighed before screening; and that the practice of pushing coal by the miners shall be prohibited.

Fifth. (*a*) Whether the coal is shot after being undercut or sheared by pick or machine, or shot without undercutting or shearing, the miners must drill and blast the coal in accordance with the State mining law of Illinois, in order to protect the roof and timbers and in the interest of general safety. Any miner who persistently violates the letter or spirit of this clause shall be discharged.

(*b*) The system of paying for coal before screening was

intended to obviate the many contentions incident to the use of screens, and was not intended to encourage unworkmanlike methods of mining and blasting coal, or to decrease the proportion of screened lump, and the operators are hereby guaranteed the hearty support and coöperation of the United Mine Workers of America in disciplining any miner who from ignorance or carelessness, or other cause, fails to properly mine, shoot, and load his coal.

Sixth. In case slate, bone, clay, sulphur, or other impurities are sent up with the coal by the miner, it shall be the duty of whomever the company shall designate as inspector to report the same, with the estimated weight thereof, and the miner, or miners, so offending shall have such weight deducted from the established weight of the car, and for the first offense in any given month shall be fined fifty cents; for the second offense in the same month he or they shall, at the option of the operator, be fined two dollars or suspended for two working days; and for the third, or any subsequent offense, in the same month, or in malicious or aggravated cases, for the first, or any subsequent offense, the operator may indefinitely suspend or discharge.

The company weighman shall post in a conspicuous place at the pit-head the names of all miners dealt with hereunder.

The inspector designated by the operator shall be a member of the U. M. W. of A., but in the discharge of the duties herein specified shall not be subject to the jurisdiction of the local union or president or pit committee, and against any miner or committeeman seeking in any way to embarrass the inspector in or because of the discharge of such duties the provisions of the miners' State constitution shall be invoked, and in addition he shall, at the option of the operator, be suspended for two working days.

In case it shall be alleged, by either the local representatives of the miners or by the operator, that the inspector is not properly performing his duties hereunder, it shall be so reported to the miners' sub-district president, who shall, within forty-eight hours after the receipt of notification,

take it up with the superintendent of the company for adjudication; and, if it shall be found that the inspector is not faithfully performing such duties, he shall be discharged or transferred to other duties, as the operator may elect.

The proceeds of all fines hereunder shall be paid to the Miners Sub-District Secretary-Treasurer, and under no circumstances shall any such fines be remitted or refunded.

Seventh. The miners of the State of Illinois are to be paid twice a month, the dates of pay to be determined locally, but in no event shall more than one half month's pay be retained by the operator. When any number of men at any mine so demand, statements will be issued to all employees not less than twenty-four hours prior to pay day. The miners and operators shall decide locally as to the form and manner in which statements shall be issued. No commission will be charged for money advanced between pay days, but any advances between pay days shall be at the option of the operator.

Eighth. The price for powder per keg shall be one dollar and seventy-five cents; the miners agree to purchase their powder from the operators, provided it is furnished of standard grade and quality; that to be determined by the operators and expert miners jointly, where there is a difference.

Ninth. The price for blacksmithing for pick mining shall be six tenths of a cent per ton for room and pillar work and twelve and one half cents per pay per man, or twenty-five cents per month for long wall for pick and drill sharpening.

Tenth. It is understood that there is no agreement as to the price of oil.

Eleventh. The inside day wage scale authorized by the Indianapolis agreement of February 7, 1903,[1] shall be the scale under this agreement; Provided, that the twelve and one half per cent. advance shall apply on all classes of under-

[1] See page 100.

ground day labor not specified above, whose rates have been fixed locally.

Twelfth. The above scale of mining prices is based upon an eight-hour work day, and it is definitely understood that this shall mean eight hours' work at the face, exclusive of noon time, six days a week, or forty-eight hours in the week, provided the operator desires the mine to work, and no local ruling shall in any way affect this agreement, or impose conditions affecting the same.

Any class of day labor may be paid, at the option of the operator, for the number of hours and fractions thereof actually worked, at an hour rate based on one eighth of the scale rate per day. Provided, however, that when the men go into the mine in the morning they shall be entitled to two hours' pay whether the mine hoists coal two hours or not, except, in the event that they voluntarily leave their work during this time without the consent of the operator, they shall forfeit such two hours' pay. Provided, further, that over-time by day laborers when necessary to supply railroad chutes with coal by night or Sunday where no regular men therefor are exclusively employed, or when necessary in order not to impede the operation of the mine the day following, and for work which cannot be performed or completed by the regular shift during regular hours without impeding the operation of the mine, may be performed and paid for at the same rate per hour.

Thirteenth. (*a*) The duties of the pit committee shall be confined to the adjustment of disputes between the pit boss and any of the members of the United Mine Workers of America, working in and around the mine, for whom a scale is made, arising out of this agreement or any subdistrict agreement made in connection herewith, where the pit boss and said miner, or mine laborers, have failed to agree.

(*b*) In case of any local trouble arising at any shaft through such failure to agree between the pit boss and any miner or mine laborer, the pit committee and the

miners' local president and the pit boss are empowered to adjust it; and in the case of their disagreement it shall be referred to the superintendent of the company and the president of the miners' local executive board, where such exists; and shall they fail to adjust it — and in all other cases — it shall be referred to the superintendent of the company and the miners' president of the sub-district; and, should they fail to adjust it, it shall be referred in writing to the officials of the company concerned and the State officials of the U. M. W. of A. for adjustment; and in all such cases, the miners and mine laborers and parties involved must continue at work pending an investigation and adjustment, until a final decision is reached in the manner above set forth.

(*c*) If any day men refuse to continue at work because of a grievance which has or has not been taken up for adjustment in the manner provided herein, and such action shall seem likely to impede the operation of the mine, the pit committee shall immediately furnish a man or men to take such vacant place, or places, at the scale rate, in order that the mine may continue at work; and it shall be the duty of any member, or members, of the United Mine Workers, who may be called upon by the pit boss, or pit committee, to immediately take the place or places assigned to him or them in pursuance hereof.

(*d*) The pit committee, in the discharge of its duties, shall under no circumstances go around the mine for any cause whatever, unless called upon by the pit boss or by a miner or company man who may have a grievance that he cannot settle with the boss; and, as its duties are confined to the adjustment of any such grievances, it is understood that its members shall not draw any compensation except while actively engaged in the discharge of said duties. Any pit committee man who shall attempt to execute any local rule or proceeding in conflict with any provision of this contract, or any other made in pursuance hereof, shall be forthwith deposed as committee man. The foregoing shall not be

construed to prohibit the pit committee from looking after the matter of membership dues and initiations in any proper manner.

(*e*) Members of the pit committee employed as day men shall not leave their places of duty during working hours, except by permission of the operator, or in cases involving the stoppage of the mine.

(*f*) The right to hire and discharge, the management of the mine, and the direction of the working force are vested exclusively in the operator, and the U. M. W. of A. shall not abridge this right. It is not the intention of this provision to encourage the discharge of employees, or the refusal of employment to applicants because of personal prejudice or activity in matters affecting the U. M. W. of A. If any employee shall be suspended or discharged by the company and it is claimed an injustice has been done him, an investigation to be conducted by the parties and in the manner set forth in paragraphs (*a*) and (*b*) of this section shall be taken up promptly, and, if it is proven that an injustice has been done, the operator shall reinstate said employee and pay him full compensation for the time he has been suspended and out of employment; provided, if no decision shall be rendered within five days the case shall be considered closed, in so far as compensation is concerned, unless said failure to arrive at a decision within five days is owing to delay upon the part of the operator, in which case a maximum of ten days' compensation shall be paid.

Fourteenth. The wages now being paid outside day labor at the various mines in this State, plus an advance of twelve and one half per cent., shall constitute the wage scale for that class of labor during the life of this agreement: provided, that no top man shall receive less than two dollars and two and a half cents per day.

Fifteenth. In the event of an instantaneous death by accident in the mine, the miners and underground employees shall have the privilege of discontinuing work for the remainder of that day; but work, at the option of the opera-

tor, shall be resumed the day following, and continue thereafter. In case the operator elects to operate the mine on the day of the funeral of the deceased, as above, or where death has resulted from an accident in the mine, individual miners and underground employees may, at their option, absent themselves from work for the purpose of attending such funeral, but not otherwise. And whether attending such funeral or not, each member of the U. M. W. of A. employed at the mine at which the deceased member was employed shall contribute fifty cents and the operator twenty-five dollars for the benefit of the family of the deceased, or his legal representatives, to be collected through the office of the company. In the event that the mines are thrown idle on account of the miners' or other employees' failure to report for work in the time intervening between the time of the accident and the funeral, or on the day of the funeral, then the company shall not be called upon for the payment of the twenty-five dollars above referred to.

Except in case of fatal accidents as above, the mine shall in no case be thrown idle because of any death or funeral; but in the case of the death of any employee of the company or member of his family, any individual miner may, at his option, absent himself from work for the purpose of attending such funeral, but not otherwise.

Sixteenth. (*a*) The scale of prices herein provided shall include, in ordinary conditions, the work required to load coal and properly timber the working places in the mine, and the operator shall be required to furnish the necessary props and timber in rooms or working face. And in long wall mines it shall include the proper mining of the coal and the brushing and care of the working places and roadway according to the present method and rules relating thereto, which shall continue unchanged.

(*b*) If any miner shall fail to properly timber, shoot, and care for his working place, and such failure has entailed falls of slate, rock, and the like, the miner whose fault has occasioned such damage shall repair the same without com-

pensation, and if such miner fails to repair such damage he may be discharged.

Any dispute that may arise as to the responsibility under this clause shall be adjusted by the pit committee and mine foreman, and in case of their failure to agree, shall be taken up for settlement under the thirteenth section of this agreement.

In cases where the mine manager directs the placing of cross-bars to permanently secure the roadway, then, and in such cases only, the miner shall be paid at the current price for each cross-bar when properly set.

The above does not contemplate any change from the ordinary method of timbering by the miner for his own safety.

Seventeenth. The operators will recognize the pit committee in the discharge of its duties as herein specified, but not otherwise, and agree to check off union dues, assessments, and fines from the miners and mine laborers, when desired, on proper individual or collective continuous order, and furnish to the miners' local representative a statement showing separately the total amount of dues, assessments, and fines collected. When such collections are made, card days shall be abolished. In case any fine is imposed the propriety of which is questioned, the amount of such fine shall be withheld by the operator until the question has been taken up for adjustment and a decision has been reached.

Eighteenth. The operators shall have the right in cases of emergency work or ordinary repairs to the plant, to employ in connection therewith such men as in their judgment are best acquainted with and suited to the work to be performed, except where men are permanently employed for such work. Blacksmiths and other skilled labor shall make any necessary repairs to machinery and boilers.

Nineteenth. The erection of head frames, buildings, scales, machinery, railroad switches, etc., necessary for the completion of a plant to hoist coal, all being in the nature of construction work, are to be excluded from the jurisdiction

of the United Mine Workers of America. Extensive repairs to or rebuilding the same class of work shall also be included in the same exception. The employees thereon to be excluded as above, when employed on such work only.

Twentieth. When any employee absents himself from his work for a period of two days, unless through sickness or by first having notified the mine manager and obtained his consent, he may be discharged.

Twenty-first. (*a*) Except at the basing point, Danville, the differential for machine mining throughout the State of Illinois shall be seven cents per ton less than the pick mining rate. It being understood and agreed that the machine mining rate shall include the snubbing of coal either by powder or wedge, and sledge, as conditions may warrant, where chain machine is used; but it is understood that this condition shall not apply where two men have and work in one place only in the same shift, except at the option of the miner; and it shall also be optional with the miner which system of snubbing shall be followed. The division of the machine mining rate shall be fixed in joint sub-district meeting.

(*b*) The established rates on shearing machines and air or electric drills as now existing shall remain unchanged during the ensuing year.

Twenty-second. Any underground employee not on hand so as to go down to his work before the hour for commencing work, shall not be entitled to go below, except at the convenience of the company. When an employee is sick or injured, he shall be given a cage at once. When a cage load of men comes to the bottom of the shaft, who have been prevented from working by reason of falls or other things over which they have no control, they shall be given a cage at once. For the accommodation of individual employees, less than a cage load, who have been prevented from working as above, a cage shall be run mid-forenoon, noon, and mid-afternoon of each working day; provided, however, that the foregoing shall not be permitted to enable

men to leave their work for other than the reasons stated above.

Twenty-third. This contract is in no case to be set aside because of any rules of the U. M. W. of A. now in force or which may hereafter be adopted; nor is this contract to be set aside by reason of any provision in their national, State, or local constitutions.

Twenty-fourth. All classes of day labor are to work full eight hours, and the going to and coming from the respective working places is to be done on the day hand's own time. All company men shall perform whatever day labor the foreman may direct. An eight-hour day means eight hours' work in the mines at the usual working places, exclusive of noon time, for all classes of inside day labor. This shall be exclusive of the time required in reaching such working places in the morning and departing from same at night.

Drivers shall take their mules to and from the stables, and the time required in so doing shall not include any part of the day's labor; their time beginning when they reach the change at which they receive empty cars — that is, the parting drivers at the shaft bottom, and the inside drivers at the parting — and ending at the same places; but in no case shall a driver's time be docked while he is waiting for such cars at the points named. The inside drivers, at their option, may either walk to and from their parting, or take with them, without compensation, either loaded or empty cars, to enable them to ride. This provision, however, shall not prevent the inside drivers from bringing to and taking from the bottom regular trips, if so directed by the operator, provided such work is done within the eight hours.

The methods at present existing covering the harnessing, unharnessing, feeding, and caring for the mules, shall be continued throughout the scale year beginning April 1, 1903; but in cases where any grievances exist in respect to same, they shall be referred to the sub-district meetings for adjustment.

When the stables at which the mules are kept are located on the surface and the mules are taken in and out of the mines daily by the drivers, the question of additional compensation therefor, if any, is to be left to the sub-districts affected for adjustment, at their joint sub-district meetings.

Twenty-fifth. Mission Field Scale.[1]

Twenty-sixth. The company shall keep the mine in as dry condition as practicable by keeping the water off the road and out of the working places. When a miner has to leave his working place on account of water, through the neglect of the company, they shall employ said miner doing company work when practicable and provided that said miner is competent to do such work, or he will be given another working place until such water is taken out of his place.

Twenty-seventh. The operator shall keep sufficient blankets, oil, bandages, etc., and provide suitable ambulance or conveyance readily available at each mine to properly convey injured persons to their homes after an accident.

Twenty-eighth. The operator shall see that an equal turn is offered each miner, and that he be given a fair chance to obtain the same. The check weighman shall keep a turn bulletin for the turn-keeper's guidance. The drivers shall be subject to whomever the mine manager shall designate as turn-keeper in pursuance hereof.

In mines where there is both hand and machine mining, an equal turn shall mean approximately the same turn to each man in the machine part of the mine, and approximately the same turn to each man doing handwork; but not necessarily the same to each hand miner as to each man working with the machines.

Twenty-ninth. There shall be no demands made locally that are not specifically set forth in this agreement, except as agreed to in joint sub-district meetings held prior to May 1, 1903. Where no sub-districts exist, local grievances

[1] The Mission Field Scale is here omitted.

shall be referred to the United Mine Workers State Executive Board and the mine owners interested.

The United Mine Workers of America, District No. 12:
W. R. Russell, *President.*
T. J. Reynolds, *Vice-President.*
W. D. Ryan, *Secretary-Treasurer.*

The Illinois Coal Operators Association:
O. L. Garrison, *President.*
E. T. Bent, *Secretary.*

Springfield, Ill., March 7, 1903.

Formal collective bargaining is also seen in its full development in the agreements in the foundry trade proper, in the railway business, in the boot and shoe trade, and in the building trades in general, where they are very common.[1]

We have thus far confined our view of collective bargaining mainly to the United States. The custom, however, is not only much older in Great Britain, as

[1] For other agreements than those given in this volume see the Bulletins of the United States Bureau of Labor, Nos. 44, 47, 48, 49. Mr. John Graham Brooks, in the Appendix to his volume, *The Social Unrest*, gives the latest joint agreement of the Master Carpenters Association and the United Carpenters Council, of Boston. Professor Ashley in the appendices to his *Adjustment of Wages* prints the Indiana State agreement in the coal trade for 1900 and the scales for the Hocking Valley and the Pittsburg District for 1901–1902. The *Report of the Industrial Commission* (vol. xvii.) prints the Indianapolis agreement of 1900, the Illinois agreement for 1901–1902, the tin-plate workers' agreement for the same year; those of the iron moulders, the machinists (with the Metal Trades Association), the window-glass cutters, the typographers, the longshoremen; the mason builders, and the bricklayers of Boston and New York; the marble workers, roofers and sheet metal workers, and structural iron workers of New York; the painters of Troy, N. Y.; the granite cutters of Concord, N. H.; the bakers and confectioners of Richmond, Va.; the brewers of St. Louis; butchers and their workmen; the garment makers; hotel employees; the metal polishers, and the woodworkers; and the Louisville and Nashville Railroad employees.

we have seen; it is practised far more commonly there than in America, as might be expected from the more advanced development of trade-unionism. Mr. and Mrs. Webb, in a notable chapter on "The Method of Collective Bargaining" ("Industrial Democracy," part ii. chapter ii.), have given a full and luminous description of the system, and have shown its wide diffusion in the United Kingdom. They begin with the informal bargaining of a group of unorganized workmen with the foreman or employer, through their representatives. The "collective will" of a number of men in a cabinet-making shop, for instance, in regard to the proper price to be paid for work on a new pattern, finds expression through the natural expedient of a committee, and the employer, meeting the committee, comes to some sort of agreement with this social mind. He makes a contract about the matter with the body of workers, not with one or more individuals taken separately. What is thus accomplished in the way of a "shop bargain," by a shop club, is shown on a larger scale and in a more elaborate form when a union in one of the building trades, for example, agrees with all the employers of a town or district upon "working rules," which cover substantially the same points as the joint agreements we have been observing in America. "The number of these 'working rules' in force in the United Kingdom has never been ascertained, but it must be very large, there being scarcely any town in which one or other of the building trades has not obtained a formal treaty with its employers. Our own collection of these treaties in the building trades alone numbers several hundred."

[1] *Industrial Democracy*, p. 175 *n.*

Among the English cotton spinners and cotton weavers, and the iron-shipbuilders, collective bargains are made between national organizations of employers, on the one hand, and of workpeople, on the other, which complete the hierarchy of agreements and bind the whole industry throughout the country. The bodies making these agreements are often termed "wages boards," or "boards of conciliation and arbitration." Not all the national unions of England, however, have at all times followed this practice, when the way was open to them. "A few old-standing wealthy unions of restricted membership have sometimes preferred . . . to attain their ends by the method of mutual insurance, whilst others, at all periods, have been formed with the express design of attaining their ends by the method of legal enactment."[1] The collective bargains made by the trade-unions, local or national, have in England, as here, the effect of establishing a customary rule for the town or the trade that governs non-unionists as well as unionists. Especially when the sliding scale is a part of the collective agreement are large bodies of workmen in a particular district brought under it, however little they may like it. Of the 120,000 South Wales coal miners, not a third, say Mr. and Mrs. Webb, are even professedly members of any trade-union, and many of the organized workmen refused to agree to the scale of 1893. Nevertheless they were subjected to it because the employers agreed with the trade-unions upon such a scale. Trade-unions also assist employers' associations to coerce employers into submission to an agreement which they have not signed. "Working rules" in the building trades are even

[1] *Industrial Democracy*, p. 177.

held by county court judges to be binding on the employer, unless he has made an express contract to the opposite effect. Non-unionists, too, have conducted great strikes and have concluded joint agreements which became binding on all the workers of a district, unionists and non-unionists alike. Mr. and Mrs. Webb, therefore, state that "collective bargaining thus extends over a much larger field than trade-unionism." Their impression is that, "in all skilled trades, where men work in concert on the employers' premises, ninety per cent. of the workmen find either their rate of wages or their hours of work, and often many other details, predetermined by a collective bargain."

Although the system of joint agreements has not reached the same high degree of development in America as in England, the tendency in this direction is so strong that for all practical purposes, not of description but of argument, we may treat the United States as on a par with England. Whether the men enjoying the advantages of a collective bargain are unionists, whose representatives have actually concluded the agreements with the employers, or non-unionists, the actual application of such agreements, by the tacit consent of all parties, restricts the individual bargain to an ever-narrowing field. Where but very few workmen are employed in a petty shop, they may be wholly or partly unionists, and the master who would otherwise "manage his own business in his own way" is even here confronted by conditions hostile to his time-honored theory. The range of individual bargaining is more and more limited to the dealings of small employers with non-unionists whom they engage separately and in some degree secretly. The "custom of the trade"

is determined more and more effectually by the system of joint agreement, and the small employer is influenced by this custom to give the wages or the hours sanctioned by it, far more than he is fully aware. Domestic service is one of the few fields over the entire extent of which individual bargaining seems to flourish undisturbed, but it is at the same time, in this country at least, one of the fields where the workers least need the help of a collective bargain to increase their wages or to lighten their work, — so far does the demand outstrip the supply.

The individual bargain between a single man wanting work and the single employer — both being "free" and uncombined with their kind — is now, or will soon be, the exception. Collective bargaining between combined workmen and combined employers is the rule today in all large-scale production. Nothing can well be more futile than the efforts of a few thinkers like Mr. T. S. Cree[1] to invoke the magic formula of "supply and demand" against joint agreements. "'Supply and demand' is a good phrase enough, when you know how to manage it," as Walter Bagehot said, but only on that condition. When the attempt is solemnly made to prove that a trade-union, the essence of which is collective bargaining, cannot raise wages, since the supply of laborers is the same as before the union existed or acted, and the demand — the money-power of the capitalist to engage laborers — is the same as before, it is evidently being manipulated very awkwardly, by persons who substitute their own out-of-date emotions for an acceptance of the plain facts of every-day experi-

[1] In his *Criticism of the Theory of Trade-Unions* (Glasgow, Bell and Bain, 1895).

ence. Collective bargains, freely accepted by both employers and workingmen, are again and again seen to raise wages and shorten hours. The enlightened employer will accordingly cease to pin his faith to formulas sadly misapplied by men who will not let their minds play freely over the facts of their own day. As Bagehot went on to say: "A trade-union establishment at once alters the mental conditions; it turns the laborer, in the Stock Exchange language, from a weak holder into a strong one: it enables him to hold. Before, he must either take the master's terms or starve; now he has money to live and will often get more, because he can stand out for a good bargain." The employer of to-day is not free to suppose that workmen may not properly combine when combination with other producers is his own chief ambition. Workmen, as well as employers, act in masses to-day, as Jevons has said, and not as individuals; the tendencies of modern industry have destroyed the very foundations of the old industrial individualism.

It is not easy to overrate the importance of collective bargaining. But we must not lose sight of the fact at any time that its social character does not make collective bargaining anything else, fundamentally, than bargaining. The position of one or the other, or both, of the bargaining parties has altered, but each must still "make a bargain" if he would continue in production. He no longer makes this bargain himself by dealing directly with the other party. He intrusts this task to a representative, to whom he usually gives full powers to bind him. If he is an employer belonging to a strong shipping federation, for instance, that has triumphed more than once over seamen's unions, he must still re-

member that in all bargains reasonableness and fairness are strong forces; that an arbitrary disposition, an unwillingness to compromise on unessential points, a determination thoroughly to subdue the other party, never can make a lasting bargain. They can only compel a temporary truce when the other party is at an unusual disadvantage; soon, on the slightest provocation, war will break out again, and no one will suffer more in the long run than the pig-headed employer. So, too, the Knight of Labor, flushed with numerous victories over the employer in prosperous times, with a rising market, needs to beware of over-confidence and the presumptuous ambition of crushing the Missouri Pacific Railway entirely. All bargaining depends upon the essential reasonableness of the bargainers. They will not come together unless a policy of "live and let live" really dominates both parties, unless a conciliatory disposition actually possesses both in the end, and unless both are inclined to let reason and the will of God prevail. The new wine of unionism too often goes to the head of demagogical leaders of the industrial democracy, and they then conduct themselves as if there should be no limit to the demands to be made upon the employer. "It is imagined," says Bagehot, "that because trade-unions have sometimes raised wages to some extent, they can raise them, at any rate gradually, to any extent."[1] A "joint agreement" is the coming together of two: it is not dictation by one and submission by the other. The Nemesis which waits upon the over-proud and the domineering is as active in the world of industry as in the world of politics.

[1] See Bagehot's admirable analysis of bargaining in his essay on "Adam Smith and Our Modern Economy," in his *Economic Studies* (American edition of his *Works*, vol. v. pp. 347–359).

Collective bargaining is often confused with arbitration, as we shall presently have occasion to explain in detail when we come to treat of the means of ending industrial war. It will be sufficient for the present to say that all arbitration, properly so called, brings in a third party to decide a controversy or end a disagreement. The decision of this third party is accepted by the other two parties. But, when the representatives of the two parties get together and confer, and come to an agreement for their principals, there is no trace of true arbitration present. The transaction is a piece of collective bargaining; and negotiation by principals, not interpretation by a third party, is the essence of the transaction. The general agreement, under which special agreements are made from time to time, is like the written constitution of the United States, under which special statutes are every year enacted. But if this constitutional law of industry does not provide means for meeting the case of a failure of parties to agree in a special case, it is too much like a political constitution which does not make provision for its own amendment, or for its possible failure to work under certain circumstances.

Collective bargaining, in a general way, tends to promote industrial peace, since the agreements are unaltered for a certain period of time, and sudden and frequent disputes are not apt to arise under them: as a matter of record, many strikes have thus been prevented. Either party, if discontented with the working of the agreement, bides the time when it will lapse with as much patience as it can muster. But when a joint agreement embodies also a stipulation that, in every case of inability of the parties to agree upon the

right interpretation or the just application of the terms of the agreement, an arbitrator shall be called in, to whose award both parties bind themselves to submit, then we have a new and important feature added.[1] Arbitration comes in to supplement collective bargaining. I have thus far mainly quoted joint agreements containing no such stipulation, or, in other cases, I have omitted such provisions, in order to keep the case more simple. But, as a matter of fact, many joint agreements contain, as one of their most important points, one or more paragraphs to the effect that all undecided disputes shall go to a third party for adjustment. So long as this arbitration is restricted to interpretation of the joint agreement, where the parties who made the agreement differ, and cannot get together any further than to agree to refer the case to an outsider, we have, I repeat, true and proper arbitration. But whenever a third person is called in, where the workmen and the employers cannot frame a new agreement for the future, *i. e.*, whenever they do not succeed in making a new collective bargain for and by themselves, then the case is one where collective bargaining has failed to do the whole work. The third party comes in to patch up a treaty of peace which both of the other parties have agreed they will sign, leaving the terms of it to his judgment.

If individual bargaining has its defects and limitations, so, too, has collective bargaining, although they may be of a somewhat different kind. Especially if the collective bargain is signed, not by a union or a federation of unions, but by a temporary association of

[1] This is the method followed by the Master Builders Association, of Boston, and various local unions in the building trades.

workers in a trade, as in the case of the Newcastle engineers in 1871, the danger of repudiation of the agreement, or disregard of some of its important provisions, is great, and there is no recourse for the party injured by the default. Figures show that strikes are more numerous in those industries where collective bargaining is practised by unorganized workers than in those where the trade-unions are strong. Beyond a question, then, the best machinery for the making and the enforcement of joint agreements is supplied by an employers' association on one side, that can bind its members, and a trade-union, local or national, on the other side, that can equally hold all its constituents to the terms agreed upon. Not every union or association has been able to do this. But it is much to the credit of the great majority of unions in England and America that they have generally lived up to the joint agreements which they have made; and the record of the employers' associations is equally good. But there are too many instances of breach of contract by either party or both parties, as in the case of the National Metal Trades Association and the Machinists Union. Mr. E. F. Du Brul, of the Association, said at Philadelphia in December, 1902: "We had an agreement with the Machinists Union which we claim they broke, but which they claim we broke. [A voice, 'Probably both were right.'] " These instances are sufficiently numerous to make it highly desirable that a collective bargain pure and simple should be supplemented by provisions in the agreement that all disputes regarding the interpretation of the agreement shall be referred to an arbitrator for final decision.

So long, then, as the parties provide for the settle-

ment of disputes by means of a committee made up of representatives of employer and employed, there can be no proper application of the term arbitration to the proceeding. Such provision for the purely internal settlement of difficulties, whether informally by a shop committee and a foreman, or more formally by a joint committee, according to a written agreement, is part of the bargain, and it is carried out by instrumentalities belonging to the establishment or the trade. Arbitration comes in when both parties, foreseeing that their representatives may not sometimes be able to reach a conclusion by a majority vote, insert a provision in the agreement that the matter shall then be referred to a third party outside the establishment or the trade. This is a confession that collective bargaining has no magic power to prevent or to settle all possible disagreements, and must therefore be supplemented by a resort to conciliation or arbitration. Such resort is only had under such a joint agreement with reference to the construction to be set upon the terms of the agreement itself. There may easily be an overlooked ambiguity in the use of terms; unforeseen cases may arise, apparently not belonging under any of the provisions agreed upon; new conditions may arise demanding to be brought under some of the more elastic clauses of the agreement. So long as the term of the joint agreement has not expired, all such processes of interpretation, amendment, and readjustment are processes of arbitration, properly so called. But when the agreement has reached its term, then the question comes before the two parties themselves, on what conditions they will renew the compact. In the light of their experience of the practical working of the agree-

ment, as self-explanatory or as interpreted by the arbitrators whom they have called in, both parties may agree upon certain changes in the document, the effect of which will be to incorporate the decisions of the arbitrator into the new agreement. Or they may agree to reject the interpretation of the arbitrator, and revise the document so that such interpretations will not be admissible for future arbitrators. In either case, a new and true collective bargain is made which will narrow the possible range of arbitration thereafter. In this way each successive bargain may profit by the arbitrations made under all its predecessors, and each agreement thus becomes more clear, explicit, and comprehensive. Thus we see collective bargaining and arbitration supplementing each other; neither takes the place of the other.

There is no absolute guarantee of industrial peace in the method of collective bargaining, even when supplemented by arbitration. When a joint agreement has terminated, one party or the other or both may have been so displeased with its results, whether it has been modified by the decisions of an arbitrator or not, that they refuse to enter into a new compact. One bargain has expired, and no new one can be made in the existing state of mind of the parties. If the workmen refuse to enter into a new joint agreement, their refusal is as much a "strike" as if, in the absence of such an agreement, they had declared a cessation of work for any reason. If the employers, in turn, decline to make a fresh collective bargain, a lockout is declared as really as if it had been proclaimed with no previously existing agreement. To bring the two parties together would be the work, in this case, not of

arbitration, but of conciliation. A further refinement of the collective bargain, beyond the invocation of arbitrators to settle the construction of disputed clauses, might then be made, providing that, when an agreement has expired by the lapse of time and the two parties cannot agree to the terms of its continuance, then the points in dispute shall be referred to a third party whose decision shall be accepted by the contracting parties. This action by an outsider would be in the nature, not of arbitration proper, but of conciliation, as it refers, not to the interpretation of a past agreement, but to the adjustment of the terms of a new agreement, — an adjustment which the two parties have agreed to accept as binding. If this step forward in the development of the joint-agreement system were generally taken by workmen and employers, there would be little need of invoking the intervention of the State. The fact that collective bargaining has not yet reached this advanced stage renders advisable the discussion of courts of arbitration and conciliation.

A more vital question at present is that of the best means to employ for holding both parties to strict obedience to the joint agreements which they have made, whether these provide for arbitration of disputed points or do not so provide. Such agreements have usually been without any penalty clause, so that the keeping of them has been a matter of honor. The law of the land has thus far paid no attention to this important sphere of contract which has grown up under recent conditions, while legislators have contemplated only conditions now largely outgrown. A course that naturally suggests itself is the bringing of both parties to such collective bargains within the authority of the law. If

statute law has not yet given attention to this variety of industrial conduct, there is no sufficient reason why it should remain perpetually blind. A revision of the law of contracts in order to make it include such joint agreements would not be a strained device. As the employer, individual or associated, can already make a binding contract (which will have practical worth and validity, since he has property which, in case of breach of contract, can be attached in a suit), it would remain only for the union with which he deals to come into an equal position of legal obligation. In other words, it would need to be incorporated, in order to become, palpably and indisputably, a body able to make binding contracts. In case the agreement is to be between a number of employers, on the one hand, and a trade-union or a number of trade-unions, on the other hand, the employers should be incorporated so as to become immediately responsible, and the union or unions should also be incorporated. Employers, being already responsible parties before the law, make little if any objection when this plan is proposed to them as associations. Without incorporation, they are individually liable for the acts of such an association to an extent generally considered undesirable. Incorporation would bring to them a lessening of responsibility, and the popularity of incorporation of ordinary business enterprises, in place of individual ventures or partnership combinations, shows how widely these advantages are felt. But the trade-unionists take a very different attitude toward incorporation. Most of them are violently opposed to it. In respect to the particular point before us, they declare that it is far better that trade agreements should depend on the honor of the parties than that

the unions should be exposed naked to their enemies, as they are confident would be the case. As this matter is one which deeply concerns the future of collective bargaining, we shall do well to consider it in detail; but let us first review the interesting history of the variety of the collective bargain known as the sliding scale.[1]

[1] The most important treatments of collective bargaining under this name have been mentioned in this chapter, in the references to the volumes of Mr. and Mrs. Webb and Professor Ashley, and to the seventeenth volume of the Industrial Commission Report. Mr. T. G. Spyers, in his epitome of the evidence and the report of the Royal Commission on Labour, entitled *The Labour Question*, has a brief chapter on the subject in connection with strikes. Older books vindicating the right of combination in trade-unions treat substantially the same phenomenon under a different name, but with a difference of emphasis. F. Moissenet's *Étude sur les Contrats Collectifs* is a legal essay (Paris, 1903).

CHAPTER V

THE SLIDING SCALE

ALTHOUGH the sliding scale[1] has had a much wider adoption in England than in the United States, it was first practised, in a notable degree, of recent years in this country.[2] The earliest American sliding scale was adopted in 1864, "in the manufactories of New England," according to Professor Munro ("Sliding Scales in the Iron Industry"), on the authority of Mr. J. D. Weeks. But the first one to become well known was due to the United Sons of Vulcan, an organization of iron boilers and puddlers. Originated in Pittsburg in

[1] The late Professor J. E. C. Munro's definition of this method of wage-payment in the coal industry is comprehensive and authoritative: "The 'sliding scale' is a method by which wages, based on a standard wage payable at a standard price, rise or fall an agreed percentage with every agreed rise or fall in the average price of coal at the mines, such average price being ascertained at fixed intervals." (Sliding Scales in the Coal Industry, p. 6. This paper was contributed to the meeting of the British Association in 1885, and printed in the volume of its *Proceedings* for that year. Another paper on "Sliding Scales in the Iron Industry" may be found in the *Proceedings* of the Manchester Statistical Society for 1885.) Professor Munro is the leading authority on this subject, although his estimate of the value of the method now seems exaggerated. Mr. L. L. (F. R.) Price, in his slender volume on *Industrial Peace*, a report made to the Toynbee Trustees and first printed in the *Journal of the Royal Statistical Society* for March, 1887, has treated minutely the sliding scales in the English coal and iron trades. Mr. Price's valuable work, though not found in his publishers' catalogue, is fortunately not out of print.

[2] Professor S. J. Chapman, in an article noted later in this chapter, says that "The first sliding scale was Thornicroft's, which was introduced in 1840." The next was that for puddlers and mill men in the North of England and Staffordshire in 1863.

1858, by the local union known as the Iron City Forge, this body was the parent of the great Association of Iron, Steel, and Tin Workers of the United States.[1] In February, 1865, committees representing the manufacturers and the boilers met in general conference and adopted the following: —

Memorandum of Agreement, made this thirteenth day of February, 1865, between a committee of Boilers and a committee from the Iron Manufacturers, appointed to fix a scale of prices to be paid for boiling pig iron, based on the manufacturers' card of prices; it being understood either party shall have the right and privilege to terminate this agreement by giving ninety days' notice to the other party, and that there shall be no deviation without such notice. When the manufacturers' card of prices are at the rates named below the price for boiling shall be at the prices opposite per ton of 2,240 pounds.

Manufacturers.	Boilers.	Manufacturers.	Boilers.
$8\frac{1}{2}$ cents per pound	$9.00	$5\frac{1}{2}$ and $5\frac{1}{4}$ cents per pound	$6.00
$8\frac{1}{4}$ " " "	8.75	5 and $4\frac{3}{4}$ " " "	5.75
8 " " "	8.50	$4\frac{1}{2}$ and $4\frac{1}{4}$ " " "	5.50
$7\frac{3}{4}$ " " "	8.25	4 and $3\frac{3}{4}$ " " "	5.00
$7\frac{1}{2}$ and $7\frac{1}{4}$ " " "	8.00	$3\frac{1}{2}$ and $3\frac{1}{2}$ " " "	4.75
7 and $6\frac{3}{4}$ " " "	7.50	3 and $2\frac{3}{4}$ " " "	4.50
$6\frac{1}{2}$ and $6\frac{1}{4}$ " " "	7.00	$2\frac{1}{2}$ " " "	4.00
6 and $5\frac{3}{4}$ " " "	6.50		

This scale remained in effect but a short time. Iron fell from $7\frac{1}{2}$ cents a pound in February, 1865, to 4 cents in July. The boilers gave the required ninety days' notice. At the end of this time the scale would have given them $6.00 a ton, the tide having turned; but they asked and received $8.00 without the scale.

[1] See the articles by Labor Commissioner Carroll D. Wright in the *Quarterly Journal of Economics*, for November, 1901, and July, 1893. See also vol. xvii. of the Industrial Commission's *Report*, pp. 339–347.

Later, the United Sons of Vulcan procured the adoption of a new sliding scale, which was signed July 23, 1867. This provided that $9.00 a ton should be paid until August 17 ; from that time until September 15, $8.00 ; and then this price and a 5-cents card rate being taken as the standard, there should thereafter be a reduction or an advance of twenty-five cents for each change of one quarter of a cent per pound on card rates until a 3-cents rate gave $6.00 for boiling. Either party could terminate the arrangement by giving thirty days' notice. This scale was afterwards modified to allow changes by tenths of a cent per pound instead of quarters of a cent; in this form it fixed the wages for boiling iron for seven years, until 1874. A number of conferences were held in vain in November and early December of that year, after the manufacturers had given notice to terminate the agreement. A strike began and continued for the whole winter. On the 15th of April, 1875, the manufacturers voted to resume at $5.50, iron being at $2\frac{1}{2}$ cents a pound. Each manufacturer signed the same scale as the others, but individually: the system of joint agreement between the manufacturers and the puddlers thus came to an end and was not afterward resumed. But in other branches of the iron business trade-unions had been formed, and scales were adopted by them. These bodies united with the Sons of Vulcan in 1875, to form the Amalgamated Association of Iron, Steel, and Tin Workers of the United States. "Where the Amalgamated Association is recognized, the agreement and sliding scale systems prevail," the agreement being between the unions and either individual manufacturers or associations of manufacturers.

In the anthracite coal region of Pennsylvania the Workingmen's Benevolent Association, the general union of the trade, ordered a strike on May 10, 1869, to secure the adoption of a sliding scale. This was granted by the majority of the companies some five weeks later. "When coal sold at $3.00 a ton at Port Carbon, outside labor was to get $11.00 a week; inside labor $12.00; platform men $11.50, and miners $14.00 clear of all expenses. Prices of coal were to be taken from five operators, each producing more than 30,000 tons a year, and to be selected every month by representatives of the union. The sizes to be taken into consideration were 75 per cent. large coal, 12½ per cent. chestnut, and 12½ per cent. peanut coal. For every advance of 25 cents over the $3.00 a ton, 50 cents was to be added to the weekly wage and 5 cents on the price paid per wagon for mining. The price of coal was not to fall below $3.00 per ton. . . . The sliding scale agreement drafted by the men themselves was expected to work smoothly. It did not, however. In August the union asked for a 20 per cent. advance, which was 10 per cent. above the rates coming to them on the basis laid down the previous June. It was a gross violation of the contract voluntarily entered into by the miners."[1] In October some collieries struck, and in January, 1870, the Anthracite Board of Trade of Schuylkill County gave notice to their men that the $3.00 basis would be reduced to $2.00, and the miners struck. This was followed by an order from the union for a general suspension, "asking for eight hours and the old basis." In August, 1870, a compromise went

[1] *The Anthracite Coal Industry*, by Peter Roberts, Ph. D., pp. 177, 178.

into effect on the basis of $2.50, outside labor to be paid $9.13 a week; inside labor $9.96, and miners $11.90. But a six months' strike ensued, after a notice of a reduction of 30 per cent. in wages by the three leading companies of the Northern coal fields; the men were badly beaten, and "went to work on the terms of the employers." "In Schuylkill the question of the basis was submitted to arbitration." The arbitrator fixed this at $2.75, this giving the miner $13.00 a week clear of expenses; the inside laborer, $11.00; the outside laborer, $10.00; 10 per cent. reduction on contract work, and 1 per cent. advance or reduction for every 3-cent change in the price of coal, "but the price was not to fall lower than $2.25 at Port Carbon."[1] In January, 1875, the Schuylkill operators reduced wages 10 per cent. "The long strike" followed, but in June the Schuylkill miners went to work on a 20 per cent. reduction. After that "the rates paid labor according to the price of coal were wholly left in the hands of the operators."

In October, 1900, a convention of the striking miners of that year demanded that the sliding scale in vogue in the Middle and Southern fields since 1870 should be discontinued, and the companies agreed to this. The great anthracite strike of 1902, however, has had for one of its results the reëstablishment of the system under the awards of the Coal Strike Commission. The commissioners awarded an increase of wages to the mine workers for three years. In prescribing the sliding scale, they did not expect "any immediate addition to the increases already provided for in the earnings and wages of mine workers, or that

[1] *The Anthracite Coal Industry*, pp. 179, 180.

it necessarily means an increase at all, but with the thought that if, in the future, the price of coal should become what might be called abnormally high, there might be participation by miners and mine workers in the profits derived from such increased price." [1]

This was the scheme of the Commission : —

The Commission, therefore, adjudges and awards : That the following sliding scale of wages shall become effective April 1, 1903, and shall affect all miners and mine workers included in the awards of the Commission : —

The wages fixed in the awards shall be the basis of, and the minimum under, the sliding scale.

For each increase of five cents in the average price of white ash coal of sizes above pea coal, sold at or near New York, between Perth Amboy and Edgewater, and reported to the Bureau of Anthracite Coal Statistics, above $4.50 per ton f. o. b., the employees shall have an increase of 1 per cent. in their compensation, which shall continue until a change in the average price of said coal works a reduction or an increase in said additional compensation hereunder ; but the rate of compensation shall in no case be less than that fixed in the award. That is, when the price of said coal reaches $4.55 per ton, the compensation will be increased 1 per cent., to continue until the price falls below $4.55 per ton, when the 1 per cent. increase will cease, or until the price reaches $4.60 per ton, when an additional 1 per cent. will be added, and so on.

These average prices shall be computed monthly, by an accountant or commissioner, named by one of the circuit judges of the third judicial circuit of the United States, and paid, by the coal operators, such compensation as the appointing judge may fix, which compensation shall be distributed among the operators in proportion to the tonnage of each mine.

In order that the basis may be laid for the successful

[1] Report of the Commission, pp. 71, 72.

working of the sliding scale provided herein, it is also adjudged and awarded: That all coal-operating companies file at once with the United States Commissioner of Labor, a certified statement of the rates of compensation paid in each occupation known in their companies, as they existed April 1, 1902.[1]

The sliding-scale method has generally commended itself as a considerable approach, at least, to a "fair wage" system. Workingmen have proposed it on this ground. It has seemed to them, as it has seemed to most economists, that the prices obtained for a product measure, fairly well, the profits made by the manufacturer. When prices are high the natural presumption, under ordinary circumstances, is that the employer is making money. When prices are low, one naturally thinks that the employer is making less money, if not actually losing money. A scheme, then, which alters wages as profits apparently vary, according to prices, is self-commending. The United Sons of Vulcan were moved to ask for a sliding scale by an obvious inequity in this direction. In 1837 the wage paid for boiling a ton of iron was seven dollars; by 1858 this price had gradually been reduced to three dollars and a quarter, but iron sold for nearly ten dollars a ton more than in 1837. The inevitable comment on this state of things Commissioner C. D. Wright gives in the article recently quoted: "It is easily seen that the boilers were not receiving a fair proportion of the profit of production for their labor."[2] The sliding scale aims to correct

[1] By November 14, 1903, there had been five increases of wages granted under this sliding scale, a 6 per cent. increase having been reached in October, by successive steps from an increase of 2 per cent. in June.

[2] *Quarterly Journal of Economics* for 1893, p. 404.

this injustice through an automatic regulation of wages, as prices change. As Professor Marshall says: "The sliding scale, when working at its best, arranges that those influences which short-period fluctuations in the price of a commodity are bound to exercise on the current wages (the quasi-rents) of the labor by which they are made, shall work themselves out smoothly and easily."

There is plainly something of a reaction to-day in the industrial world, and among economists also, from the favor accorded to the sliding scale a dozen years since. How far this reaction will go remains to be seen; but numerous sliding scales, once effective and satisfactory, have been abandoned in England as well as in America, and several economists of ability have expressed themselves unfavorably on the question of the theoretical soundness of the principle. Professor Munro's declaration that the sliding scale is "the greatest discovery in the distribution of wealth since Ricardo's enunciation of the law of rent," would be endorsed by very few to-day.[1] The four scales adopted in the Durham coal fields from 1877 to 1884, have been succeeded (since 1889) by a system of conciliation and arbitration. The two Northumberland sliding scales, of 1879 and 1883 (the latter terminated by the masters in 1887), have likewise given way to a joint committee arranging wages and other labor matters at meetings held every two months. Professor William Smart, in his excellent paper in praise of the system,[2] names other sliding scales formerly in effect in the

[1] "That it has a great future before it, not only in the iron and coal trades, but in other industries, I have no doubt."

[2] *Studies in Economics*, No. 3, 1895.

Cannock Chase, Ocean, Bedworth, and Somerset collieries, and also mentions the absence of the method from the coal mines of North and West Lancashire, Leicestershire, Derbyshire, and Yorkshire. In Scotland a sliding scale adopted in Ayrshire in 1873 continued but one year, and an interesting scale adopted by the Lanarkshire Coal-masters Association in 1887 lasted but two years. (It should be noted that any scale thus imposed by one side on the other fails of being a true collective bargain.)

The several sliding scales which were actually in operation in the coal industry when Professor Smart wrote in 1895, and upon which he chiefly relied in his commendation of the system, have since been abandoned in favor of other methods. As my purpose in this volume is to give, not a history of all the efforts made toward industrial peace, but rather a view of the methods now in force or on trial, I shall pass over these scales with a brief mention. The South Wales and Monmouthshire scale resulted from a great strike in 1875. It was to be revised every six months; it presented a minimum [1] and a maximum wage. The second scale, dated January, 1880, abandoned these upper and lower limits of wages; it was to last for two years and to be revised every four months. It provided for an extraordinary advance in wages when coal reached a certain high selling point; this is the so-called "double jump," which operated in a similar manner to reduce wages when coal prices fell to the same figure. The third scale, of June, 1882, "was substantially the same as the

[1] "In 1878 the miners consented to a reduction of five per cent. below the minimum, which, however, was made up to them by a special bonus for one year under the second scale."

second." Passing over several of its successors, we may note the change of the revision period in the scale of 1895 to two months.[1] For further particulars of these scales, as well as of those operating in the Cumberland coal mines from 1879 onward, and in the South Staffordshire mines from 1888 onward, Professor Smart should be consulted.

The record of the sliding scale in the iron and steel industries of Great Britain shows a much shorter list of changes to wages or conciliation boards with joint agreements not variable for a fixed term. These boards, as we shall see, are widely prevalent in the iron and steel trades, and most of them operate sliding scales; many have had these scales in effect for considerable periods and have found them very conducive to harmony. As specimens of the scales now prevailing, I take from Professor Ashley's recent volume, "The Adjustment of Wages," these two agreements.

MIDLAND IRON AND STEEL WAGES BOARD.

Sliding scale for the regulation of ironworkers' wages, prepared by the Sliding Scale Committee appointed October 8, 1889, and finally confirmed by the unanimous resolution of the Board passed October 21, 1889.

1. The employers have selected six firms, and the operatives six firms, as follows, whose books are to be examined by the accountants [names of the firms here omitted].

2. The employers and operatives jointly appointed Messrs. B. Smith, Sons, & Wilkie, accountants, of Darlington Street, Wolverhampton, as accountants for the purposes of the scale, and they are instructed —

[1] The sliding scale "was forced back" upon the South Wales miners by the coal owners in 1898, after a desperate strike against it. (Ashley, p. 38.)

(*a*) To take out the weights and selling price of all classes of iron as rolled and delivered from the mills (*excepting* charcoal iron, cold rolled, or that which has been subject to any additional process, and steel sheets, scrap ends, and defective sheets) sold by the twelve selected firms, every *two months*, commencing with September and October, 1889, as the first bi-monthly period. This ascertainment shall regulate wages for the two months of December and January, and so on, as shown thus :—

The average net selling price, two months ending			Will regulate wages for two months ending
October 31, 1889.....	Last	Saturday in	January, 1890
December 31, 1889.....	"	"	March, 1890
February 28, 1890.....	"	"	May, 1890
April 30, 1890.....	"	"	July, 1890
June 30, 1890.....	"	"	September, 1890
August 31, 1890.....	"	"	November, 1890
October 31, 1890.....	"	"	January, 1891

And so on.

(*b*) For this purpose, books or sheets are to be provided by the board for the private use of each firm, in which all sales as aforesaid are to be entered, and the selling expenses are to be shown under the following heads: 1. Railway Dues, Freight, Insurance, etc. 2. Discount, 2½ per cent. being the usual amount for each payment in the district. 3. Commission.

(*c*) The books or sheets shall be cast up at the end of each *two months*, showing totals of sales and expenses, from which the net average selling price of the total tonnage shall be ascertained.

(*d*) These books or sheets shall be examined by the accountant, by comparing them with the existing books of the firm.

(*e*) The accountant shall forward to the employers' and the operatives' secretaries certificates duly signed, showing the result of his examination, at least one week before the bi-monthly wages settlements.

(*f*) The accountant to be so chosen and instructed shall give an undertaking in writing that he will under no circumstances disclose to any other person the details of the books he has examined.

3. The average selling price having thus been ascertained, the standing committee, consisting of the chairman and vice-chairman of the board, and the two secretaries, with two other members belonging to each section of the board, shall meet and declare the price of puddling per imperial ton, in the following manner: —

(*a*) Puddlers' wages shall be one shilling and ninepence (one shilling and sixpence, — *Resolution* of July 31, 1893) in excess of one shilling for each pound sterling per ton in selling price, and the fractional parts shall be regulated thus: —

			s.	*d.*		*s.*	*d.*		
(*b*)	From	over	2	6	to	5	0	wages	3*d.*
	"	"	5	0	to	7	6	"	3*d.*
	"	"	7	6	to	10	0	"	6*d.*
	"	"	10	0	to	12	6	"	6*d.*
	"	"	12	6	to	15	0	"	9*d.*
	"	"	15	0	to	17	6	"	9*d.*
	"	"	17	6	to	20	0	"	1*s.* [1]

(*c*) Millmen's wages shall be advanced or reduced in the same way as heretofore, viz.: —

For 1*s.*	Puddling	.....	10	per	cent.	Millmen
" 9*d.*	"	.....	$7\frac{1}{2}$	"	"	"
" 6*d.*	"	.....	5	"	"	"
" 3*d.*	"	....	$2\frac{1}{2}$	"	"	"

(*d*) Such rates to include all claims in lieu of Northern extras.

4. The sliding scale thus established shall continue in operation until determined by notice from either side, in writ-

[1] The rate paid per ton between 1892 and 1900, in accordance with this scale, varied between 7*s.* 3*d.* and 9*s.* The list will be found in the Board of Trade *Report on Standard Piece Rates and Sliding Scales* (1900), p. 28.

ing, of one calendar month, such notice to terminate at the close of one of the bi-monthly periods for which wages are regulated by this scale.

THE PIG-IRON TRADE OF SCOTLAND.

Rules of procedure for the Board of Conciliation established between the Owners of Blast Furnaces in Scotland and the Scottish Blast Furnacemen : —

Schedule of Wages. (1) Wages to August 1, 1900 : — The present rate of furnacemen's wages shall be increased by 5 per cent. on the basis rates as from May 1, 1900, and the wage so fixed shall remain in force until August 1, 1900.

(2) Sliding scale to regulate wages : — Thereafter, and until August 1, 1901, wages shall be regulated by the average selling price of Scotch pig-iron warrants in the Glasgow market, and shall rise or fall 5 per cent. on the basis rates for every 4*s.* 6*d.* of rise or fall in the price of pig-iron as above, the wage fixed in article No. 1 hereof being understood to be the wage applicable to a selling price of Scotch pig-iron warrants over 75*s.* 8*d.*, and not over 80*s.* 2*d.* per ton, but in no case shall the wages so fixed fall below a point 15 per cent. over the basis rates ruling at January 1, 1899, nor rise above a point 10 per cent. on basis rates over the wage fixed in article No. 1 hereof, and the laboring wage shall not fall below 3*s.* per shift for efficient furnacemen.

(3) Ascertainment of Average Selling Price: — The average selling price of Scotch pig-iron warrants shall be ascertained by two accountants chosen one by either party, or by one accountant chosen mutually, and shall be struck every three months, the ascertained price for each three months to regulate the wages for the succeeding three months. The daily average shall be the mean of the highest and the lowest price paid for the day, and the three months' average shall be the average of the total daily averages for the three months.

Professor Ashley also presents the full table of wages for all classes of blast-furnace men employed by the Cleveland Iron Masters Association in force from December 31, 1897. The sliding scale was introduced in the Cleveland District in 1879, and included the miners as well; but the miners withdrew from it in June, 1889. One version given was that it "hurt the Union." "The scale being signed for two years, there seemed no call to pay any more into the Union." The prosperity of the sliding scale in the iron industry of England is doubtless due in no small degree to the comparatively large power which the masters have of regulating prices in accordance with cost of production.

On the basis of this mingled experience of success and failure, Professor Ashley criticises the sliding scale from the standpoint of theory and from that of practice also.[1] He concludes that boards of conciliation and arbitration, as they are very successfully functioning in England to-day, represent a higher stage of development than does the sliding-scale system. The question in debate between Mr. L. L. Price and Professor Ashley (see a review of "The Adjustment of Wages" in the "Economic Journal" for September, 1903, pp. 386–391) does not concern the value of the sliding scale in the past, for this is admitted on all sides to have been great, but its value to-day by the side of the joint agreement, renewed usually every year, with its terms modified or unaltered, as the case may be. Ordinary collective bargaining settles upon a scale of wages for a term of months or years, and no change is allowed before the time expires. The sliding-

[1] *The Adjustment of Wages*, pp. 37 f. and 54 f.

scale system, on the contrary, provides that during a set term, usually longer than that set for a fixed scale, wages may be frequently changed according to the variations of the price of the product. Mr. Price prefers this automatic readjustment, at comparatively frequent intervals, to the more troublesome and less frequent changes made by fresh collective bargaining.

It would seem, however, that some of the objections made to the sliding scale, pure and simple, have been accepted in practice as well made, and the scales have often been modified to conform to principles quite other than the single rule that wages should follow prices. The miners who objected to the sliding scale in bad times, that "it always slides the wrong way," and that "there is no bottom to the confounded thing," embodied in these few words the theory of the "minimum wage" which has been generally accepted in the more recent scales. The trade-unions have felt that no scale of prices should be considered to justify a rate of wages below that requisite to maintain a decent standard of comfort for the workman. They have preferred to see mills working only half time at good wages, or altogether shut down, rather than to see the manufacturer take the dangerous liberty of marking down wages below such a minimum because prices were extremely depressed. That this is good policy one may easily allow. The principle of a minimum wage has thus been grafted upon the sliding-scale system, and scales are not now drawn up on the basis of prices alone. The workman who has complained that the sliding scale always slides the wrong way for him now finds its descent arrested at a certain point by a wage which alters not for any later fall in prices.

The minimum wage is a very essential modification of the pure sliding scale. Another important change is introduced when the employer insists that the state of the labor market shall also be taken into consideration. This claim has frequently been conceded, but the concession greatly weakens the case for the sliding scale as an automatic regulator of wages. Other concessions are here and there demanded and granted, and they all point to the superiority of a free collective bargain made, say, once a year, over a sliding scale running on for a considerable length of time.

Professor S. J. Chapman, in the "Economic Journal" for June, 1903, has briefly contrasted "the facts of some ten to twenty years ago with the facts of to-day" in regard to the use of the sliding scale. "At some time prior to 1888 almost all the colliers of England, Wales, and Scotland were working under sliding scales, and in addition a great many of the iron miners, blast-furnace men, and iron and steel workers. Now the last sliding scale in the coal trade, that of South Wales, has just been repudiated; in iron mining in 1900 only one firm was using the sliding-scale, and in lime quarrying only one firm. In the manufacture of pig iron and in the iron and steel industries it is true that the numbers paid by sliding-scales are considerable; but there the list ends. . . . On the Continent sliding scales never took even temporary root, and in the United States, while they are said to work satisfactorily in the iron and steel trades, they have met with little success in any other field." He then goes on to point out "some theoretical objections to sliding scales," which he is far from claiming dispose of the system in practice, while the reaction

against it "may be partly due to an undefined recognition of these defects."

Granting that wages should vary as "normal profits" vary, the sliding scale regulates a period to come by a period that has past, although other reasons than these profits may be plain for variations in the demand for labor. No scale lasts for a long time. "When the scale is drawn up, admittedly bargaining takes place. There is no group of indisputable premises on earth from which the ratio which wages should bear to various rates of profit in different businesses could be deduced. What settles the ratios is bargaining; what settles the forces at work in bargaining is the relative strengths of masters and men (which are variable), the state of trade at the time and in the past, and the expected state of trade in the future (again variables)." "Incessant revisions of the scales" are to be expected as these circumstances change. "If sliding scales of a satisfactory character can be constructed, they must be definitely recognized as merely temporary agreements. They do not take the place of bargains, but merely mean that a heap of bargains is made at once." The question, "How shall profits be measured?" presents difficulties not always easily disposed of; so does the matter of long contracts for future delivery, made by the masters when prices are low. This is a common practice, and it is very useful in steadying the trade. The South Wales agreement of 1892 sought to remedy the resulting inequity for the workmen by providing that "any contract for sale of coal for a period of more than twelve months shall not be taken into account for more than six successive audits of two months each;" but this is another departure from the simple plan of regu-

lating wages purely by prices. In regard to the important point of the frequency with which changes in wages should be made, Professor Chapman inclines to agree with Professor Schmoller that a comparatively steady wage is of much more consequence to the workman than a very variable one, which would, of course, observe the high-profit periods.[1] The battle for the living wage and the minimum wage is noted by Professor Schmoller as a step in this direction away from sliding scales. Ten years earlier he had said that, "It is questionable whether the principle itself (implied in sliding scales) is right, that wages should vary just as profits."

No one can deny that sliding scales have done much good, for they have brought about conditions of peace in industries where strife and turmoil had previously prevailed. "Though theoretically indefensible in a large degree," says Professor Chapman, "the sliding scale succeeded where other plans had failed. Bargaining, particularly in matters of wages, without quarreling, implies a higher degree of civilization than we are wont to suppose. . . . It was better, then, to guess before the event and to agree to pay, whatever happened, what would probably be unsuitable wages, than to try to arrive at suitable wages through the extravagant contending claims put forward by heated disputants not only at the 'natural' times for redistribution, but at inconvenient times which recurred with inconvenient frequency. And the sliding scales had the merit of emphasizing the right principle of distribution in the rough." [2]

[1] *Die historische Lohnbewegung von* 1300–1900 *und ihre Ursachen* von G. Schmoller, 1902.

[2] The importance of this qualification, "in the rough," will appear,

Without abating, then, the praise due to the sliding scale, it seems, on the whole, that its imperfections in theory should be frankly conceded, and that the effort should be made, if it is given up, to retain and develop the feature of collective bargaining which has been the backbone of advantage in the system. For myself, I regard it as a real advance when the practice of making joint agreements at fixed intervals (not less than six months apart) takes the place of a sliding scale, arranged for a number of years in advance, and calling for changes in the wages every two or three months. Mr. Price, in his review of Professor Ashley's "Adjustment of Wages," stands by the sliding scale as superior to the board of conciliation and arbitration, and thinks that "it may prove eventually to have been a step backwards and not an advance forwards, to have substituted the human mechanism of a conciliation board for the comparative automatism of a sliding scale." I must agree, however, with Professors Ashley and Chapman, as well as with Mr. Garland, that the important point is gained when both parties are willing to come together and try honestly and strenuously to make an agreement. "After all," says Mr. Garland, "it is the getting together of employer and employee

for instance, in the case described by Mr. M. M. Garland, formerly president of the Amalgamated Association of Iron and Steel Workers, in his evidence before the Industrial Commission in 1901. "The discovery of the great steel ore mines in the Masaba and other ranges of mountains in the Northwest has had a very decided effect in reducing the price of both steel and iron. . . . These new mines were easily operated, and created an abundance of ore in market. . . . This enabled the manufacturers to . . . retain their former margin, or even a greater margin, as it suited them. . . . The sliding scale, by reason of the cheapening of the article, would of necessity reduce wages to the minimum established."

with fair intentions that cultivates reason on both sides." That boards of conciliation will do well to adopt "explicitly or implicitly, some similar guiding principle," as Mr. Price goes on to say, is an easy inference from the undoubted success of the sliding scale while it lasted. This former guiding principle is not now accepted by masters or men without question, as supreme. If we accept all the qualifications which Mr. Price grants in his argument for sliding scales, — concerning the need of revision, maximum and minimum wages, the unfitness of sliding scales for industries not resembling coal mining or iron manufacturing, the difficulty of operating them even in industries to which they are adapted, and their liability to breed discontent as "unfair," — it would seem time to absorb this method into the larger method of collective bargaining. If both parties are reasonable enough to agree upon so difficult a matter, comparatively speaking, as a complicated sliding scale, they should *a fortiori* be able to construct a joint agreement which can be worked by a conciliation and arbitration board. The sliding scale has, in fact, needed a good deal of assistance from conciliation methods. Such methods have been developed in a large and admirable degree in England. Before considering them in detail, however, it will be desirable to deal with a matter that affects all collective bargaining, — the incorporation of trade-unions as well as of employers' associations.[1]

[1] To the volumes and articles mentioned in the course of this chapter, there needs only to be added, in the way of bibliography, Mr. J. Stephen Jeans' little book, *Conciliation and Arbitration in Labour Disputes* (London, 1894), chs. vii.–xiv. and Appendix I.

CHAPTER VI

THE INCORPORATION OF INDUSTRIAL UNIONS

INSIDE the limits of that great involuntary association known as human society, the trade-union belongs among the voluntary associations which the law implicitly or explicitly permits to exist.[1] It is not an illegal association in modern civilized countries. It resembles other associations which are formed, not for the sake of carrying on a business with capital stock and for profit, but for mutual aid or instruction or social recreation. Such are the Odd Fellows, the Free Masons, friendly societies, Browning societies, athletic clubs, and the like. Modern countries exhibit an astonishing number and variety of such combinations, and the most civilized society shows the largest number and the greatest variety of these voluntary associations for purposes of mutual aid or culture.

Formerly the general corporation acts did not mention trade-unions as bodies which were permitted to change their status from voluntary associations with liability in severalty to corporations with limited liability. More recent statutes in many States (for instance, New York, Massachusetts, Maryland, Michigan, and Iowa) have remedied this defect and have expressly included trade-unions among associations which may be incorporated, and thus partially relieve the individual

[1] "Industrial union" is a convenient term to include both the trade-union and the employers' association.

member from responsibility for the actions of the body.[1] A United States law of 1886 allows the incorporation of national trade-unions, "provided they have two or more branches in the several States, with headquarters located in the District of Columbia." The State statutes just mentioned also allow the incorporation of the Knights of Labor, and their building societies, the Farmers Alliance, or Grangers, and workingmen's aid societies.[2]

Trade-unions, like other associations, may enforce

[1] *Handbook to the Labor Law of the United States*, by F. J. Stimson, pp. 168, 169.

[2] It may be well here to give one of the standard definitions of the corporation: "A corporation, or a body politic, or body incorporate, is a collection of many individuals united in one body under a special denomination, having perpetual succession under an artificial form and vested by the policy of the law with the capacity of acting in several respects as an individual, particularly of taking and granting property, of contracting obligations, and of suing and being sued; of enjoying privileges and immunities in common, and of exercising a variety of political rights, more or less extensive, according to the design of its institution, or the powers conferred upon it, either at the time of its creation or at any subsequent period of its existence." (*Kyd on Corporations*, 13: A. D. 1793.) Chief Justice Marshall's classic statement of the nature of a corporation lays equal stress upon the limitation of its powers and upon its earthly immortality: "A corporation is an artificial being, invisible, intangible, and existing only in contemplation of law. Being the mere creature of law, it possesses only those properties which the charter of its creation confers upon it, either expressly or as incidental to its very existence. These are such as are supposed best calculated to effect the object for which it was created. Among the most important are *immortality* and, if the expression may be allowed, individuality: properties by which a perpetual succession of many persons are considered as the same, and may act as a single individual. . . . It is chiefly for the purpose of clothing bodies of men in succession with these qualities and capacities that corporations were invented and are in use. By these means a perpetual succession of individuals are capable of acting for the promotion of the particular object like one immortal being." (Marshall, C. J., in Dartmouth College *v.* Woodward, 4 Wheat. 636.)

all the provisions of their by-laws against their members, collecting fines from them and expelling them if contumacious. On their side, expelled members have the usual legal rights against unions for any abuse of their functions. A member wrongly expelled can obtain a writ of *mandamus* for reinstatement; if he has suffered any loss, by reason of expulsion, he may recover damages.

American law thus permits the incorporation of trade-unions, but neither State nor Federal law demands that the trade-union be incorporated in order to obtain legal existence, any more than in the case of the Odd Fellows or a base-ball club. It is a case of "may," not of "shall," of permission, not of compulsion, and this is substantially the law in other civilized countries to-day. When we inquire to what extent American trade-unions avail themselves of this privilege, we obtain apparently contradictory answers. Mr. J. L. Kennedy, of the recent United States Industrial Commission, represents the usual belief when he says (Report, vol. vii. p. 803): "Our information has been that there is practically no incorporation of unions anywhere in the United States." Mr. John McMackin, the present Commissioner of Labor of the State of New York (the witness then under examination), had stated that "the great majority of the trade-unions in New York State are incorporated now: in fact, they are nearly all incorporated on account of their benevolent character." He afterward submitted, as part of his testimony, "a list of the labor organizations which had filed certificates of incorporation in the office of the Secretary of State of the State of New York, principally under chapter 875, Laws of 1871, and the mem-

bership corporations law (chapter 559, Laws of 1895)," between 1871 and 1900. But, as the compiler of the digest prefixed to volume vii. of the Report points out, this list presents only "about 300 out of about 1,600 unions existing in the State," — less than one fifth, instead of "the great majority" asserted by Mr. McMackin. The United States Commissioner of Labor testified that he did not know "of a single instance in this country where a labor organization has been incorporated under either State or federal laws" (Report of Testimony, vol. vii. p. 6). Mr. John Kunzler, president of the Flint Glass Workers Union, says that none of the unions of this craft are incorporated (p. 938). Mr. J. S. Kelley, president of the United Association of Journeymen Plumbers, Gas Fitters etc., on the other hand, believes that "the majority of the local unions [of plumbers, etc.] are incorporated in their States," while declaring that there are, to his knowledge, such unions incorporated in Illinois, New York, and New Jersey (p. 974).

This conflict of testimony is apparently resolved by the question asked of Labor Commissioner Wright by Senator Mallory (p. 6), and his answer: "Are there not State laws authorizing the incorporation of benevolent associations under which trade-unions have organized? — There are such laws, and purely benevolent societies, which grow out of the parent organization, have, in some instances, incorporated under these laws." On consulting the laws of New York, mentioned in the heading of Mr. McMackin's list, we find that these three hundred trade-unions have incorporated simply as benevolent associations, or "friendly societies," to use the English term, or, to use the New York term, as

"membership corporations." "A membership corporation may be created under this article for any lawful purpose." American trade-unions, we may, therefore, confidently state, are *not* incorporated bodies in the ordinary, accepted sense of the term.

As the trade-unions have legal power to incorporate fully, if they so desire, the inquiry is pertinent, Why do they not avail themselves of the opportunity? Let us listen to some of the witnesses before the Industrial Commission.[1] The statement made by Mr. H. F. Garrett, president of the State Federation of Labor, Atlanta, Ga., is brief, and covers substantially the ground taken by other trade-unionists who are opposed to incorporation. "By the advice of an attorney, we did not apply for a charter. — Why? Because you did not wish to incur the responsibilities that a charter would bring into it [the union]? — Yes."[2]

Desire to avoid responsibility for their actions, in one direction or another, is stated by other witnesses before the Industrial Commission to be the chief reason why the unions refrain from incorporation. The particular responsibility to be avoided is variously put by them. Mr. M. M. Garland, formerly president of the Amalgamated Association of Iron and Steel Workers of America, declares that the "question has been brought up a number of times, and our organization is rather opposed to it. . . . Perhaps the greatest reason is that we extend over a number of States, making incorporation a little difficult in that respect; and then,

[1] The statements made by the various witnesses before the Industrial Commission seem to present this matter of incorporation in a more interesting manner than the trade-union literature does.

[2] *Report*, vol. vii. p. 548.

at times, irresponsible persons become members, and our organizations would be responsible, if we were incorporated, for actions of men whose character we do not know when they come in." These two objections obviously have little weight: trade-unions are not usually appalled by things "a little difficult," and the natural method of dealing with irresponsible members of an organization is to expel them. Mr. Garland does not regard incorporation as feasible, or see any benefits in it, so far as "our end is concerned" (p. 85 of Testimony, Report, vol. vii.). Mr. J. W. Bridwell, secretary of the Atlanta Federation of Trades, takes us a step further, in speaking for the Georgia unions: "We can get along better without being incorporated; we take that for granted the same as the national trades [organizations]: they have studied the legal effect of not being incorporated; we follow suit." "*Q.* Your purpose is to escape certain liabilities that corporations are subject to under the law? *A.* That is the idea. — *Q.* How do you expect to sue and be sued, or do you want anything of that kind? *A.* It is never necessary for us to sue. — *Q.* Suppose, through the carelessness of your operators, one of your men should get killed and another one hurt: what recourse have they? *A.* They have recourse as individuals. — *Q.* Therefore he is not benefited by the organization in that particular? *A.* No. — *Q.* He can go to the common law and sue for damages? *A.* Yes. — *Q.* You cannot go to the courts of Georgia to enforce a contract as an organization, because you are not incorporated? *A.* Cannot through the courts, but can enforce a contract through means of a strike" (vol. vii. p. 237).

Mr. A. Strasser, an ex-president of the Cigar Makers International Union, agrees with Mr. Bridwell that "there is no advantage permanently" to the unions in incorporation. "I do not see any necessity of incorporating them. . . . It would not give them any more standing in most of the States. It could not give any more legal standing in the State of New York than they have now, and it would make them liable to a number of law-suits, and they cannot be now. I have consulted with some of the best lawyers in the State of New York, and they have advised against incorporation" (vol. vii. p. 261). "If incorporated, there would be great danger that the funds of the organization could be attached by some malicious employers, and they could sue them for damages, and keep their funds continuously in danger by continued litigation, which would undoubtedly be detrimental. I speak from the advice of some of the best lawyers of the State of New York. I used to believe in incorporation, but I have changed my mind" (p. 262). Mr. Strasser showed the very common prejudice of the unionists against the courts in his reply to the next question asked: "The act of incorporation means that those who are not justly dealt with according to that act of incorporation have redress in law. Now, if we are observers of law in all cases, why do we fear incorporation?" He answered: "As the judiciary is now constituted, with life tenure, largely selected from attorneys of corporations and other large, wealthy institutions, the natural inclinations are against labor, and the working people would get the worst of a battle, and for that reason it is against their interests to be incorporated for the present. I do not say what it

will be fifty years from now. At the present time I would advise no trade-union to incorporate, because they cannot expect justice at the hands of the courts. . . . The general public does not yet recognize the utility of the unions, especially the bench. . . . We somewhat hesitate to hand our funds over to these powers. . . . When a judge is against you by education or surroundings, he will always find a reason and argument to confirm him in his decision" (p. 262).

Mr. S. B. Donnelly, the president of the International Typographical Union, sides with Mr. Strasser in his unfavorable view of the probability of obtaining justice for trade-unions, if incorporated. "I am not in favor of the incorporation of trade-unions under the present conditions. When the State or national governments of this country encourage trade-unionism, and legally consider an organization of mechanics, farmers, or any craft, trade, or occupation, formed for the purpose of improving the social and industrial conditions, beneficial to the communities and for the benefit of the country, and consider them as legitimate organizations and encourage them, then incorporation will be possible. But under present conditions, with, in some States, trade-unionism looked upon as a form of outlawry, the incorporation of trade-unions would only result in disaster to the organizations. The laws of the States governing incorporated bodies are such that the power and influence of 'captains of industry,' as they term themselves, and commercial interests, would simply place us at the mercy of the employers, from the fact that they could instantly, with what is known as the injunction, tie up our funds, and we

would be helpless without money." Mr. Donnelly's objection to incorporation was due, he continued, not to "the fear of any conditions that trade-unions would be subjected to under the law; it is the fear of the power and influence of capital at the present time to manipulate, use, and control for their advantage, not only legislative bodies, but supposed courts of justice. I do not say that capital is at the present time, or has been, engaged in a wholesale system of bribery or purchase of lawmakers and public officials, but there is a sort of interest that I believe the banking system of this country is at the bottom of, that appears to be all-controlling and extensive, and permeates every nook and cranny of the United States. Not only must legislatures move as it directs, but courts must do the same." When asked if, "within the last twenty years the manifest power of the trade-unions, the fairness of their constitutions and their rules, and their system of conciliation, mediation, and arbitration of disputes" had not, in his opinion, "modified greatly the decisions of the courts," Mr. Donnelly gets off from the track of a direct answer, and upon the subject of child labor in Georgia (Report, vol. vii. pp. 279, 280). In reply to a later question, he grants that the existence of laws authorizing the incorporation of unions is "a legal recognition of their desirability as organizations," so far as "certain features" are concerned, perhaps (p. 283).

Mr. J. G. Schonfarber, the representative of the Knights of Labor before the Industrial Commission, testifies that this once famous organization has taken no action as a national body with respect to the incorporation of trade-unions. "In certain localities our

district and locals have, in a number of cases, become incorporated.[1] The general officers, so far as I know, with myself, have disagreed as to the effect of incorporating. We rather believe that it would be wiser not to incorporate than it would be to incorporate. The conditions of the law with reference to labor and capital are not such as to encourage a labor organization to incorporate, in my judgment. . . . The technicality of the law, and the facility with which money can utilize the law, have proven detrimental to the interests of the laboring classes. That has been brought out in numerous cases of the use of the injunction. . . . If an organization was incorporated, and had any funds, it could be easily attached. And the shifting character of the officials of labor organizations, the fact that they change every six months or a year, makes it undesirable to incorporate bodies, in my judgment." (Report, vol. vii. p. 430.)

Mr. Samuel Gompers, president of the American Federation of Labor, states to the Commission that in the first years of his connection with the labor movement, he was in favor of the incorporation of the trade-unions, but "I have not advocated that for a number of years." The reason he gives is his fear "that the time may come when there will be a disposition on the part of those who are antagonistic to the interests of the workers to mulct the treasuries of the trade-unions and destroy much of that which has been built up by the workingmen in the trade-unions. . . . *Q.* You do not believe, then, in the pecuniary liability of trade-unions on any contracts for labor? *A.* I am not in fa-

[1] Probably the same thing is intended here as by Mr. McMackin in the case of the New York unions.

vor of such a proposition. I should want that the funds of a trade-union should be absolutely safe from the interference of the State. — *Q.* By interference of the State, do you mean — *Q.* (By Mr. Farquhar.) Judicial process? *A.* Including that. There has never yet been a very serious effort made on that line, unless it was clothed by some judicial process."

Asked what the objection would be to a union assuming pecuniary responsibility for its agreements, and if the danger anticipated by him would come from the inability of the union to control its members, Mr. Gompers answers: "Not necessarily; but there are a number of causes. . . . There is scarcely an act which a union can take but which, in its very nature, by reason of the large number of members, is practically a public act of which the employers are generally informed. On the other hand, there is scarcely any act that the employer can perform or take which is a public act, or of which information can reach the employees. Contracts are frequently entered into by employers with representatives of organizations. The employer determines upon a change of policy; he does not announce a lockout, simply a reorganization of his forces; . . . practically a lockout, and the employees have no redress. — *Q.* If the labor union were incorporated, and as a corporation made contracts with the employer, then it would have redress for the violation of that contract? *A.* Hardly. There is not an employer who cannot find some means to overcome the terms of a contract, more particularly when labor is poorly organized, and he can get others to take their places." Mr. Gompers, then, means to object that "the contract would be binding on the employees, and

they would be unable to enforce it against the employer," *i. e.*, in the courts, "to establish it beyond the peradventure of a doubt as legal evidence. Any one who has had long experience as an employee will understand that. Having had an experience of twenty-six years as a factory operative, I know what that means from my own observation, and I also know that as having come under my observation as one devoting his efforts to the labor movement." In answer to the apparently pertinent inquiry, "Is that not precisely the evil which the advocates of incorporation seek to remedy? Is the contention not made that, if the trade-unions were incorporated, so that they were legal bodies, their contracts would have a legal status in the courts, would be legal evidence of what was agreed, and would be enforceable?" Mr. Gompers declares dogmatically that "the fact of incorporation of a trade-union has not added either to its stability or to its ability to enforce the terms of a contract with the employer." As he has just stated that he does not know whether any trade-union is incorporated under the United States law, while a number of unions are so incorporated under State laws, it is evident that he lies under the same misconception of incorporation as Mr. McMackin.

Pressed with a restatement of the position that incorporation must, in fact, give a union legal status to enforce its contracts, Mr. Gompers admits that this would be true, "if the facts which constitute a practical violation of the terms of a contract could be presented as legal evidence in the court;" but he claims that, "as a matter of fact, the grievances from which the organized workers suffer are not in its specific viola-

tion, but by the surreptitious efforts, by indirect means, to overcome the terms of a contract and practically annul it." Mr. Gompers' attempt to illustrate this point is not a help toward understanding his position,[1] but when it is suggested that the answer given by him "formulates in this way: That the subject is one which cannot be covered by contract," he declares, "it is, so far as that point is concerned." He then goes on to another point which, again, is much more plainly stated for him by a commissioner than by himself: "Under a corporation, and a contract between the corporate body and the employer, you fear first, that the contract could and would be enforced against the union in the courts; secondly, that it could not be enforced against the employer, because, if a manufacturing business, he is enabled to invent numberless devices for evading it, so that the courts could not protect the union against him." The witness assents, adding: "There would be so many ways by which he could circumvent it himself." Mr. Gompers adds another reason against incorporation, that, "in an incorporated union, it would be within the power of a minority to enjoin a union from expending its funds even in accordance with its own laws." The effect of this action, though the injunction were only temporary, would be disastrous in case of a conflict between employer and

[1] "As, for instance, determining, say, that for the production of such an article a specific amount of wage shall be paid, and by the introduction of another article, precisely the same, and simply giving it another name, requiring the same amount of work to be performed in the production of the article, yet the terms of the contract are not violated. It is simply called or styled by the employer as something new, not called for by the contract, and in which he insists that that wage is a fair one." I must confess my inability to understand this kind of violation of the spirit of a contract.

employed, as the funds would not be available when most needed. A small minority could be stirred into such action by the employer, by legitimate or illegitimate means. Mr. Gompers affirms that the terms of a collective bargain "are generally observed, not because of the written agreement or contract, but because of the power of the organization," and that "the incorporation of the trade-union will not, in my judgment, help it one iota." He is "quite convinced" that "the law cannot secure through incorporation . . . what the trade-union cannot secure" (Report, vol. vii. pp. 600–602).

Having heard the unionists who oppose incorporation, let us now turn to those other unionists who advocate it. It is interesting to observe that the president of the Cigar Makers International Union in 1899, Mr. G. W. Perkins, did not agree with the former president, Mr. Strasser, on this point. Mr. Perkins testified: "I believe they [trade-unions] should be incorporated. In the first place, trade-unions have nothing to hide; they are not violators of the law, and to-day they can be, and are, brought into court — it may take a little longer — almost as quickly as they could be, and would be, if they were incorporated. If incorporated, it would give us many advantages; for instance, any corporation has the right to go into court and offer its printed constitution and by-laws, while an association like ours can only offer the written minutes; that necessitates the keeping of the written minutes of each of our conventions; we often have the old books carefully filed away in the vaults, in case we have to prove the existence of the international union. . . . I favor being incorporated, first, because it would legalize us; second,

give us more standing before courts. We are willing to be brought into court any minute" (Report, vol. vii., Testimony, pp. 171, 172).[1]

Mr. T. J. Schaffer, president of the Amalgamated Association of Iron, Steel, and Tin Workers, agrees as little with his predecessor, Mr. Garland. He hopes that "the time will come when the Amalgamated Association will be able to take out letters of incorporation and become a chartered institution." Incorporation "would obviate the necessity for strikes, — do away with the strike entirely," by making each side responsible to the other for any violation of contract or for any damage that might be done. "It would bring the manufacturer and his employee closer together, into more friendly relations." Mr. Schaffer believes that the payment of damages by a large body of incorporated laborers would not cripple them more than strikes practically do. The present obstacle to incorporation is that "our people are not ready for it. They are not educated up to the point yet." A thorough knowledge of the constitution of the association, a thorough respect for it, and as thorough a discipline as possible, he considers absolutely necessary preliminaries, and he would not advise incorporation until such time as men are ready for it (Report, vol. vii. pp. 387, 388).

Mr. Milford Spohn, a member of the legislative committee of the National Building Trades Council, is of the opinion that "a trade-union should be incorporated. They should be a responsible body at law. I

[1] Mr. Perkins appears to have altered his opinion since 1901; see the *Monthly Review* of the National Civic Federation for April, 1903, p. 4.

will qualify that by stating, that is, if there could be secured that legislation which would place them upon a par as a creature in law, with the corporation; but if not, I think it very wise for them not to become incorporated." Mr. Spohn sees no advantages to the unions themselves in being incorporated, because contracts made with corporations in Washington had been pronounced null and void, because of the stipulation in them that only union men should be employed. Mr. Spohn explains later that it would not be necessary to capitalize trade-unions because of incorporation, or in order to obtain it, as assessments are the obvious recourse in case of damages being awarded against them. "That can be done without having a dollar of capital in the treasury" (Report, vol. vii., Testimony, pp. 142, 154).

Mr. H. W. Sherman, general secretary of the National Brotherhood of Electrical Workers, holds that it would be an advantage to their local unions to be incorporated, "if the compulsory arbitration law was in force. It would not do any good now, because we cannot force a man to arbitrate," and the union would be placed in a position to be sued (Report, vol. vii. pp. 378, 381).

These and other unionist witnesses in favor of the incorporation of trade-unions seem to indicate the truth of Labor Commissioner Wright's statement: "I think there is a growing feeling among trade-unionists that sooner or later the incorporation of their bodies will be not only desirable, but a necessity. They recognize that under an incorporation they would have rights in court which they do not have now as purely voluntary associations. They have had considerable

experience in attempts to be represented in proceedings affecting their interests, and especially when railroads, for instance, are under the control of receivers. The new federal act relating to arbitration — conciliation and arbitration — as affecting carriers engaged in interstate commerce, provides that, whether incorporated or not, the officers of the union shall be granted representation in court when receivers are in charge of a road. I think this principle will grow, and that trade-unions generally will be quite willing to be placed on a level with the organizations of employers, which are usually incorporated, so that they will have equal rights before the courts." Mr. Wright had previously said: "So far as I am informed by trade-unionists themselves, they have no objection to the laws providing for incorporation, but they have not seen fit to take advantage of them, for the reason that, under an incorporation, their union would become a person under the law which could sue and be sued as any other corporation, and this would result in a liability for action, which their funds would not warrant." This statement as to the effect of incorporation harmonizes with the opinions of unionists before quoted which are adverse to such a step. But Mr. Wright believes that it would be "best for the safety of their funds that all trade-unions should be incorporated." When asked, "And the employer and employee are coming closer together through friendly legislation, are they not, — that is, through arbitration and mediation, — so there is no occasion for incorporation?" he replies, "That is very largely true, and especially on account of the establishment of trade committees; the lace trade, for instance, has its own

boards of arbitration. That is a growing feature in this country also." [1]

The testimony of three representative employers appearing before the Industrial Commission is emphatic as to the need of incorporation of the unions. Mr. H. B. Gombers, secretary of the National Association of Master Steam and Hot Water Fitters, declares that: "Most of the labor unions are unincorporated. They are simply intangible. Try to put your fingers on them, and they are not there." His own association of employers is incorporated (Report, vol. vii. pp. 952, 959).

Such is the case also with the Master Builders Association of Boston, of which Mr. W. H. Sayward is the well-known secretary. "I think," he says, "that all organizations of that nature should be incorporated under some general law, — organizations of workmen and employers, — so as to define their functions" (Report, vol. vii. p. 860).

Mr. Frank Leake, a cotton manufacturer of Philadelphia, believes that "the employer is always at the disadvantage of dealing with people . . . who have no pecuniary standing to reimburse him for any damages for failure of contract. . . . When it comes to legal enactment, I think one of the most helpful things from the laborers' standpoint would be that labor organizations should be incorporated, have capital, power to sue and be sued; then the employers would feel they were dealing with responsible bodies in the event of any breach of contract, and there would be redress. I think

[1] I understand Commissioner Wright in these words to be referring to the first part of the question asked him, about the "coming closer together," not to the "no occasion for incorporation."

it will finally come to this" (Report, vol. xiv. pp. 278, 279).

The arguments of the witnesses before the Industrial Commission against the incorporation of trade-unions do not approve themselves to a candid mind.[1] The witnesses substantially agree in deprecating the responsibility which incorporation would bring about, and none of them faces the moral point involved, — that any body of men having great power to benefit or injure their fellow-men should be held to a strict responsibility for the moral or legal use of such power. It may well be a question whether the authority holding them to such a responsibility should be public opinion or the law of the land; but it is sufficiently obvious that where, as in this case, public opinion has been free to assert itself, but has proved to be comparatively ineffective, then the offices of the law should be invoked. Mr. F. J. Stimson's forcible statement that the policy of labor organizations has been "to secure the greatest possible amount of power . . . while not assuming any responsibility whatever,"[2] is verified, again and again, in the history

[1] Mr. John Mitchell's chapter on this subject in *Organized Labor* follows the same general lines.

[2] "The principle of all labor combinations, up to date, has been to secure the greatest possible amount of power by lawful methods, or even by unlawful combinations, while not assuming any responsibility whatever, either to employers or to their own members. Now, I am well aware that it is, at first sight, an attractive position to labor to be in the position of a guerrilla army, which, while making a simultaneous attack, can dissolve at the moment of any defeat and scatter, so that, while it may sometimes win, it can never lose. Nevertheless, I believe these advantages are superficial, and the true interest of labor lies the other way. This is, after all, like the position of slaves or savages. No contracts can be enforced against them; they can scatter in the woods, and do individual damage when as an army they have yielded. Nevertheless, in the long run, while their outbreaks are suppressed, they cannot, by peaceful means, gain much for themselves as a class.

of strikes. The men who think of quitting work by a concerted strike on a trolley line, on a railway, or on gas or water-works, for instance, have it in their power to cause a large amount of inconvenience, money loss and other injury upon the public at large, as well as upon their employers. They realize this power and exult in it, as a weapon of might in the intended warfare. How often do they also realize the equal obligation resting upon them, so far as possible, not to involve the innocent public in the controversy as a suffering party? The usual thought with the unionist is to avail himself of this suffering as much as possible, in order thus to bring pressure to bear from the public upon the employer to grant the strikers' demands. It surely is a truism that collective power should carry with it collective responsibility.

The same unwillingness to accept responsibility and to defer to authority, if it decides against one, is seen in the matter of the violence that accompanies nearly all, if not all, great strikes in recent years. The leaders of the unions may counsel peace and order in the most emphatic language and with all sincerity, and declare again and again that a policy of violence will inevitably set public opinion against the strikers. If, as a fact, however, arson or murder is committed under circumstances in which the result of the crime is to frighten the non-unionist from working and the public from dealing with the boycotted employer, the union disclaims all that moral responsibility which naturally falls upon the party profiting by the crime. It con-

I have yet to learn that it is a blessing to a free citizen, or a free body of citizens, to be unable to make an agreement with the persons with whom they deal." — *Labor in its Relations to Law*, pp. 135, 136.

ducts no vigorous investigation of its own to see if any of its members are guilty persons; if members are brought before the courts charged with such crimes, the union furnishes them counsel, and if they are found guilty, it does not expel them from the union; no such expulsion is known to the annals of American trade-unionism. It is small reason for wonder that such a course provokes hatred in the employer. These many professions of concern for the keeping of peace and of preference for only lawful measures must be rated as merely "academic" so long as the unions immediately profit by the crime, encourage the accused, and do not punish the guilty. It is not in such ways that the unions show a due feeling of responsibility for their powers.

The tone of the arguments against incorporation employed by Messrs. Gompers, Strasser, Garland, Bridwell, Donnelly, Schonfarber, Garrett, and others who agree with them, is not that of men entirely willing to face their obvious obligations. Their words have the familiar ring of the language of men who are in love, not with justice, but with irresponsible power. Human nature displays too much of this immoral affection in other spheres for us to mistake its patent manifestations here. The opposite and better spirit, which would command at once the respect of lovers of righteousness everywhere, would say to the argument for incorporation: "Yes, give us all the privileges, all the powers, all the liabilities, and all the responsibilities of incorporated bodies. Call us before the courts, as other powerful bodies are called, to answer for our misdeeds, to see if we have committed any. We have the money to engage able coun-

sel to defend our cause, and if the judges or the juries openly outrage justice in favor of our opponents, we will denounce them before the bar of public opinion."

It is not a little amusing to those who have a sense of humor to hear the situation of incorporated trade-unions prophesied by three of these witnesses as likely to be pitiful in the extreme. Employers, it is iterated and reiterated, will constantly be bringing purely malicious suits for damages, and no justice for the workingman can be expected from judge or jury. This attitude of leading unionists should remind an anti-protectionist vividly of the high protectionists who proudly represent American industry in one breath as able to meet competition from any quarter, and in the next as needing protection against the "pauper labor" of the Old World — a giant in one sentence, and a pigmy in the next! No discerning man can consider the great trade-unions of this country weak or contemptible opponents to meet in court. If they find some prejudices still remaining in the minds of the older judges, we cannot see why the unions alone in the world should be free from the burden of dissipating prejudice by the ordinary methods. The prejudice is not deep-seated enough to defeat the ends of justice so constantly as they would have us believe. Pleading the baby-act is a procedure quite out of keeping with the well-supplied treasuries, the large intellectual ability, and the great political influence of the trade-unions of America. When unionists assert that "the unions cannot expect justice at the hands of the courts," they come too near to enrolling themselves among the dangerous classes. No law-abiding community, especially in a free state with a popular suffrage, can perma-

nently respect men who openly proclaim their own lack of regard for the laws and the courts to which all other persons than unionists are perpetually subject.

As a matter of fact, many unionists who oppose incorporation, desire to become, even more fully than they are now, a privileged class outside of the jurisdiction of law. As regards their obligations they are silent, while eloquent for all the rights which the law can confer upon them. Mr. Gompers desires "the funds of a trade-union to be absolutely safe from the interference of the State," — the interference to which all other funds are subject. He insists that labor agreements under law would practically be binding upon employees, but not upon employers; at the same time, he avers that such agreements, when made now without legal virtue, are enforced upon the employer by the power of the organization. How incorporation, which elsewhere aids men in court, would in this case so weaken them that legal contracts could not be enforced against the employer, is one of those things which only a peculiarly constituted mind is likely to perceive. A president of the American Federation of Labor is expected to have a partisan mind; but there are degrees in such matters, and it is not well that he have a mind so strongly partisan as to weaken the most effective advocacy of his cause. The arguments of the labor leaders opposed to incorporation abound in that special pleading always dear to persons enjoying power and free from responsibility. When did such persons welcome new responsibility? It was only a Wordsworth who could write, "Me this unchartered freedom tires."

Trade-unionists as a body will yet come to learn the wisdom of the position taken by Messrs. Perkins,

Schaffer, and Sherman of their own body, by such employers as Mr. Gombers, Mr. Leake, and Mr. Sayward, and by such public men as the Duke of Devonshire, Sir Michael Hicks-Beach, and Commissioner Wright. Unions have nothing to hide, and they have nothing to lose that will not be well lost by coming into legal equality with the employer: they have nothing to gain in the end by the guerrilla policy of which Mr. Stimson speaks. As he says, it cannot be "a blessing to a free citizen, or a free body of citizens, to be unable to make an agreement with the persons with whom they deal" — an agreement of the most thoroughly binding character.

The mistake is often made of supposing that the unions are not now theoretically responsible to the law for their actions. According to the prevailing rules of law they are not free from such responsibility because they are voluntary unincorporated associations. On the contrary, "A union, although a voluntary, unincorporated association, is legally responsible for its acts in much the same way that an individual, a partnership, or a corporation is responsible. If a union, through its constituted agents, commits a wrong, or is guilty of violence, or of illegal oppression, the union, and not merely the individuals who are the direct instruments of the wrong, can be enjoined or made liable for damages to the same extent that the union could be if it were incorporated; and the funds belonging to the unincorporated union can be reached to satisfy any damages which might be recovered for the wrong done."[1] The Taff Vale Railway decision, it is

[1] Mr. Louis D. Brandeis, a prominent lawyer of Boston, in an article on "The Incorporation of Trade-Unions," in *The Green Bag,*

commonly asserted by American lawyers, "laid down no principle of law new to the country." Numerous instances may be found in our courts where labor unions have been enjoined, and in Massachusetts, "more than thirty years ago, an action was maintained against a union for wrongfully extorting from an employer a penalty for having used the product of 'scab labor.'" In case the funds of the union are not sufficient to pay the damages sought by an aggrieved employer, he can attach the property of individual members to a sufficient amount.[2] Of the use of this power there has recently been an interesting example in Connecticut.

for January, 1903. I quote Mr. Brandeis freely, as a representative of the best legal opinion of the day on the matter. A great variety of opinions from lawyers, employers, and others may be found in the first issue of the *Monthly Review* of the National Civic Federation for April, 1903.

[2] To this effect Lord Lindley thus expressed himself in the Taff Vale Railway case: "My Lords, the problem how to adapt the legal proceedings to unincorporated societies consisting of many members is by no means new. The rules as to parties to common law actions were too rigid for practical purposes when those rules had to be applied to such societies. But the rules as to parties to suits in equity were not the same as those which governed courts of common law, and were long since adapted to meet the difficulties presented by a multiplicity of persons interested in the subject matter of litigation. Some of such persons were allowed to sue and be sued on behalf of themselves and all others having the same interest. This was done avowedly to prevent a failure of justice.

"I have myself no doubt whatever that if the trade-union could not be sued in this case in its registered name, some of its members (namely its executive committee) could be sued on behalf of themselves and the other members of the society, and an injunction and judgment for damages could be obtained in a proper case in an action so framed. Further, it is, in my opinion, equally plain that, if the trustees in whom the property of the society is legally vested were added as parties, an order could be made in the same action for the payment by them out of the funds of the society of all damages and costs for which the plaintiff might obtain judgment against the trade-union."

The demand for the incorporation of the unions rests upon a quite different basis from that of theory. "While the rules of legal liability," says Mr. Brandeis, "apply fully to the unions though unincorporated, it is, as a practical matter, more difficult for the plaintiff to conduct the litigation, and it is particularly difficult to reach the funds of the union with which to satisfy any judgment that may be recovered. There has consequently arisen, not a legal, but a practical immunity of the unions in such cases for any wrongs committed."[1] Mr. Brandeis goes on to state his belief that this practical immunity is "largely responsible for the existence of the greatest grievance which labor unions consider they have suffered at the hands of the courts, that is, the so-called 'government by injunction.' . . . When, in the course of a strike, illegal acts are committed . . . the individual committing the wrong is legally liable. If the act is a crime, the perpetrator may be arrested and punished. . . . Many acts, however, may be illegal which are not criminal, and for these the only remedy at law is a civil action for damages; but, as the defendant is usually financially irresponsible, such action would afford no remedy. The courts, therefore . . . have been induced to apply freely, perhaps too freely, the writ of injunction. . . . If the courts had been dealing with a responsible union, instead of with irresponsible defendants, they

[1] Judge Warren A. Reed, of Brockton, Mass., for three years chairman of the Massachusetts Board of Arbitration and Conciliation, expresses himself to the same effect concerning the actual irresponsibility of the unions: "There seems to be a practical immunity from liability to suit, which, at present at least, serves the purpose of actual freedom from liability." (See the *Monthly Review* of the National Civic Federation for April, 1903, p. 51.)

would doubtless, in many cases, have refused to interfere by injunction."

In accord with Mr. Stimson, Mr. Brandeis considers that incorporation of the unions would greatly improve their moral tone. "A very wise and able railroad president" once said to him, "I need the labor union to protect me from my own arbitrariness." So "the best friends of labor unions must and should admit that their action is frequently hasty and ill-considered, the result of emotion rather than of reason; that their action is frequently arbitrary, the natural result of the possession of great power by persons not accustomed to its use." The unions, therefore "need something to protect them from their own arbitrariness. The employer and the community also require this protection. . . . The growth and success of labor unions . . . would be much advanced by any measures which tend to make them more deliberate, less arbitrary, and more patient with the trammels of a civilized community. . . . Incorporation would serve to this end." The unions, Mr. Brandeis concludes, "should take the position squarely that they are amenable to law, prepared to take the consequences if they transgress, and thus show that they are in full sympathy with the spirit of our people whose political system rests upon the proposition that this is a government of law, and not of men."

All that has been said about the advantages to be derived from the incorporation of trade-unions, — to themselves, to the parties with whom they contract, and to the public, — applies, *mutatis mutandis*, to the employers on their side. Each employer dealing with a trade-union separately is, of course, a legal person

already; but if he is associated with other employers, that association should become a legal person by incorporation. The too frequent failure of employers' associations to take this step was brought forward by a member of the Industrial Commission as an important reason for the opposition to incorporation felt by the trade-unions; and this view was endorsed by the Commissioner of Labor. Mr. Ratchford thought that "the incorporation of trade-unions is very largely hindered by reason of the failure of associated employers to incorporate under the law. It is true that large employers of labor incorporate under the laws, but it is rarely true that employers who are associated together in the sense of making annual agreements with their workmen are incorporated. For instance, the coal producers will meet their employees annually and make an agreement. Such an organization of employers or employees is not incorporated. . . . The workmen are largely discouraged from incorporating their unions, or making themselves amenable to the laws of the State, subjecting themselves to liabilities and damages, while the employing classes are free from such loss and liabilities."

Commissioner Wright agreed with Mr. Ratchford entirely that "the opposition to incorporation on the part of trade-unions lies very largely in the fact that employers' corporations sometimes have an association comprehending several corporations, and that that association is not amenable to the law regulating corporations; and the trade-unions do not wish to be subjected to actions which could not be brought against the parties with whom they are negotiating.

This very point was well illustrated in the Chicago strike, where the Railway Managers Association consisted of representatives of the twenty-four railroads centring in Chicago. That was a purely voluntary association, without incorporation and without legal responsibility. The unions — the American Railway Union — had to deal with that body, itself not incorporated. There lies very great difficulty in the question of incorporating trade-unions. The incorporation of an association like the Railway Managers Association would be the direct legalization of a vast trust. The incorporation of a group of labor unions would perhaps be considered the same thing ; but where a single union, like the Brotherhood of Railway Conductors, is incorporated, and it should deal with a single railroad, which is incorporated, they would then be on an equality before the law. That is a question that will crystallize later on, and voluntary associations, whether of employers or of labor unions, will find themselves at a disadvantage before the public or in the public estimation, because, as associations, they will do certain things, or order certain things done, for which no single member, whether that member is another corporation or an individual, can be held responsible. It is a very complicated question, in which the rights of the public are not yet so generally recognized as the individual rights of the members of the two voluntary associations. . . . The extension of the doctrine of injunction so as to reach a man before he commits an act for which, if committed, he would be subject to trial by the criminal courts, has led many trade-unionists to believe that they can relieve themselves of indi-

vidual responsibility through incorporation." (Report, vol. vii., Testimony, p. 8.) [1]

The desirability and the necessity of the incorporation of employers' associations as a requisite to industrial peace should, then, be recognized by all employers. As the smaller body of men, and presumably the more intelligent, they should anticipate such action by trade-unionists, and show plainly that they themselves propose thus to meet all the responsibilities involved in the new conditions of modern industry. This duty was made prominent in the excellent "Observations appended to the Report" of the Royal Commission of Labour, 1894, and signed by the Duke of Devonshire, himself a large employer of labor, Sir David Dale of Darlington (a prominent ironmaster and coal miner), Mr. Thomas Ismay (shipowner), Sir George Livesey (at the head of the South Metropolitan Gas Works of London), Mr. William Tunstill (a railway director), Sir Michael E. Hicks-Beach (formerly Chancellor of the Exchequer), Mr. Leonard H. Courtney, M. P., and Sir Frederick Pollock, the distinguished lawyer. These "Observations" closed by commending incorporation as a plan which "may, it appears to us, ultimately prove to be the most natural and reasonable solution of some, at least, of the difficulties which have been brought to our notice." At the beginning of the paper the signers called attention to the fact that "it must be borne in mind that when trade-unions or trade asso-

[1] The point raised by Commissioner Wright against the recognition of a "trust" by incorporation has lost much of its force in the last five years through the rapid development of rational opinion. The justifying reason of "trusts" is now recognized, and public opinion is seeking not to extirpate them, but to regulate them in the interest of the consumer.

ciations are spoken of, associations of employers as well as of workmen are included, and that if, in any particular instance, it appears to be suggested that special privileges should be conferred or responsibilities imposed upon one class of such associations, it will probably be found that corresponding privileges or liabilities will attach to the other." They then went on to consider forcibly the many advantages likely to be found in clothing these unions and associations with legal personality. "We are anxious to make it clear that we propose nothing of a compulsory character, but that we merely desire that existing or future trade associations should have the liberty, if they desire it, of acquiring a larger legal personality and corporate character than that which they can at present possess. It must be added that even if trade associations were thus clothed with a legal personality, it would be open to them by express stipulation to provide that any special agreement between them should not be enforceable at law" (Section 10).[1]

This last statement brings us to a point which deserves careful consideration, — the special form of corporate existence to be recommended to trade-unions.[2] In this direction I do not presume to suggest more than that any law on this subject should give express power to the unions to enter into labor contracts for

[1] A considerable part of this important document will be found in the Appendix.

[2] An incorporated trade-union would, of course, be a private corporation, without capital stock, as not being created for pecuniary profit, and belonging to the genus "benefit society." It might claim, then, to be a corporation with a soul, despite "the opinion of Manwood, Chief Baron, touching corporations: None can create souls but God; but the King creates corporations; therefore they have no souls," — an opinion which Sir Edward Coke had expressed before him.

the employment of its members, with all the privileges and liabilities consequent thereon. As Dr. Isaac A. Hourwich points out in his valuable testimony before the Industrial Commission, there should be "a provision to do away with the technical difficulties which present themselves in the formation of such contracts, — in the way, for example, of the distinction which is usually drawn between the corporation as such and its members." There should be "a special law passed which would be adapted to the needs of labor unions as corporations *sui generis*. . . . I consider that a labor organization cannot be incorporated under any of the existing laws for the incorporation of business or any other corporations, because they are not adapted to the particular needs of labor organizations. . . . The law should expressly recognize the identity of interest between the association and its members: it should be so framed that a breach of a joint contract of employment would give the union a right of action for the damages sustained by its members through resulting loss of wages or employment. The scope of this enabling act must be sufficiently broad to include all legitimate objects for which agreements are to-day made between labor unions and employers."[1] Any law for the incorporation of trade-unions should, of course, carefully stipulate for what purposes they are incorporated, and, after the manner of the New Zealand "Industrial Conciliation and Arbitration Act" of 1900, it should declare that every such society becomes a body corporate "solely for the purposes of this act."[2]

[1] Report of the Commission, vol. xiv. p. 150.

[2] While the incorporation is thus limited to proceedings and powers under the arbitration law, the field has become practically very wide. Incorporation of this kind is obviously essential to arbitration of the New Zealand type.

The important decision in the Taff Vale Railway Company case, given in July, 1901, by the House of Lords, sitting as a law court, has profoundly affected the situation in this whole matter of the incorporation of industrial unions. It is a notable instance of the truth of Mr. H. O. Taylor's remark, in the preface to the fifth edition of his "Treatise on the Law of Private Corporations:" "Courts continually change the law by endeavoring to keep it abreast of the people's life."

The importance of the case will justify a full statement.[1] Cardiff, South Wales, is situated on the Taff River, which runs down from the great coal district. The Taff Vale Railway Company, whose road runs into the station of the Great Western Railway Company at Cardiff, had a dispute, of a minor degree but complicated, with its workmen, who were members of the strong trade-union known as the Amalgamated Society of Railway Servants. This society, embracing all kinds of employees on a railway system, was registered under the Trade Union Acts of 1871 and 1876.[2] The organizing secretary brought about a strike in August, 1900, and the employees resorted to picketing about the station and elsewhere. On August 30 the railway company brought an action in the Queen's Bench Division of the High Court of Justice against the society in its

[1] The authorities for my account are the *Labour Gazette* for August, 1901; an article by Mr. John G. Steffee of New York in the *American Law Review* of St. Louis, for May–June, 1903, pp. 385–394; *Trade-Union Law and Cases*, by H. Cohen and George Howell, pp. 34–41, 82–84 (this volume brings the case down only to December, 1901); *La Crise du Trade-Unionisme*, by P. Mantoux and M. Alfossa, 1903, part i.; and the *Bulletin of the Bureau of Labor*, No. 50, January, 1904; Appendix A, to a report on *Labor Unions and British Industry*, by A. Maurice Low.

[2] 34 and 35 Vict., c. 31 (1871); 39 and 40 Vict., c. 22 (1876).

registered name, and against Richard Bell, its general secretary, and James Holmes, the organizing secretary for the west of England, including South Wales, the claim being for an injunction and for other relief, which would include damages. The injunction asked for was to restrain the society, their servants, agents, and others, acting by their authority, and their officers named as co-defendants, from watching or besetting, or causing to be watched or beset, the Great Western Railway Station at Cardiff, or the works of the Taff Vale Company, or any of them, or the approaches thereto, or the places of residence, or any place where they might happen to be, of any workmen employed by or proposing to work for that company, for the purpose of persuading or otherwise preventing persons from working for that company, or for any purpose, except merely to obtain or communicate information, and from procuring any person who might have, or might enter into, contracts with the company, to commit a breach of such contracts. The claim was supported by a statement of these facts: That on August 20, 1900, Mr. Bell wrote to the general manager of the railway company, supporting the action of their employees in ceasing to work, and stating that all further negotiations were to be conducted through him. The railway company had previously arranged for the engagement of other servants, and large numbers of men began to arrive at Cardiff for the purpose of taking the places of the strikers. These men were watched and beset, and, as was contended, were illegally prevented from entering the service of the railway company. Several instances were given of forcible prevention of men so engaged to replace those on strike.

Bell also published and circulated, over his own name, as secretary, what was known as the "Blackleg" circular, in the following terms: —

> Strike on the Taff Vale Railway. Men's Headquarters, Cobourn St., Cathays. There has been a strike on the Taff Vale Railway since Monday last. The management are using every means to decoy men here whom they employ for the purpose of blacklegging the men on strike. Drivers, firemen, brakemen, and signalmen are all out. Are you willing to be known as a blackleg? If you accept employment on the Taff Vale that is what you will be known by. On arriving at Cardiff call at the above address, where you can get information and assistance.

Further particulars were given of the interception of men on their arrival at Cardiff by Bell and a body of strikers, who asked the new men whether they wished to be known as "blacklegs," and offered to pay their fare home.

On the same day (August 30) that the company applied, the society also made application to Mr. Justice Farwell, who was then sitting as vacation judge (being a Justice of the High Court attached to the Chancery Division), that the name of the society should be struck out of the action as defendants, on the ground that they were neither a corporation nor an individual, and could not be sued in a quasi-corporate or any other capacity.

On September 5 Mr. Justice Farwell refused to strike out the name of the society, with costs against the defendant, and granted an interim injunction on the summons against the society, until the trial of the action, restraining the society in the manner asked for by the company, and ordering that the costs be

costs in the action. (The strike itself ended the first week in September.)

The society then appealed from the two orders of Mr. Justice Farwell, and on November 21, 1900, the Court of Appeal (consisting of the Master of the Rolls, the late Sir Archibald Smith, presiding, and Lords Justices Collins and Stirling) reversed the decision of Mr. Justice Farwell and dissolved the injunction granted by him against the society, and ordered the name of the society to be stricken out of the said action. Costs in the Court of Appeal and in the court below were allowed. The court held that nothing in the Trade Union Acts made a trade-union liable to be sued in its corporate name, so as to enable its funds to be taken in execution, and that the action was not maintainable against a trade-union.

The company, in turn, appealed to the House of Lords, which held that a trade-union registered under the Trade-Union Acts can be sued in its registered name, and reversed the judgment of the Court of Appeal, and restored that of the vacation judge, ordering the society to pay costs both in the House of Lords and in the court below.[1]

In the first opinion on the case, given by Mr. Justice Farwell, the trial justice, he says: —

"This is not a case of suing in contract to which the provisions of section 4 of the act would apply: it is an action in tort, and the real question is, whether, on a true construction of the Trade Union Acts, the legislature has legalized an association which can own property, and can act by its agents by interfering in labor

[1] Taff Vale Railway Company *v.* Amalgamated Society of Railway Servants and Others, House of Lords, July 12, 15, 16, and 22, 1901.

disputes between employers and employees, but which cannot be sued in respect to such acts."

The opinion then discusses at great length the various phases of the case, and reviews and distinguishes the numerous cases cited by the defendant's counsel, together with the arguments adduced to show the nonliability of the defendant association for the damages complained of. The learned justice says: —

"If the contention of the defendant society were well founded, the legislature has authorized the creation of numerous bodies of men capable of owning great wealth and acting by agents with absolutely no responsibility for the wrongs they may do to other persons by the use of that wealth and the employment of those agents. They would be at liberty (I do not at all suggest that the defendant society would so act) to disseminate libels broadcast, or to hire men to reproduce the rattening methods that disgraced Sheffield thirty or forty years ago, and their victims would have nothing to look to for damages but the pockets of individuals, usually men of small means, who acted as their agents."

The court concedes the point raised, that the defendant society is not a corporation, and that individuals and corporations are the only legal entities known to the law which are capable of suing or being sued. The gist of the decision is stated in the following paragraph: —

"Although a corporation and an individual or individuals may be the only entities known to the common law who can sue or be sued, it is competent for the legislature to give to an association of individuals which is neither a corporation nor an individual nor a part-

nership a capacity for owning property and acting by agents; and such capacity, in the absence of express enactment to the contrary, involves the necessary correlative of liability, to the extent of such property, for the acts and defaults of such agents."

It is against this doctrine, which is the basis of the judgment of the trial court, that the Court of Appeal, in an opinion written by the Master of the Rolls, rendered its decision, reversing the orders of injunction granted by Mr. Justice Farwell.

The Master of the Rolls, in delivering the judgment of the court, said: "The point is important, for if a trade-union can be sued in the manner proposed in this case, the funds of the union will be liable to be taken in execution under a judgment obtained against the union in the society's name . . . The learned judge, in the early part of his judgment, says that which is undoubtedly the truth, namely, that 'a trade-union is neither a corporation nor an individual, nor a partnership between a number of individuals,' and in this we entirely agree. There can, in our judgment, be no doubt that at common law the defendants could not be sued in the name in which they are sued in this action, any more than a tradesman could sue a defendant in the name of a West End club for goods supplied by him to that club, for the simple reason that the name of a club is not the name of a corporation, nor of an individual, nor of a partnership, which apart from the statute are the only entities known to the law as being capable of being sued." Speaking of the Trade Union Acts, the Master of the Rolls said: "Now, in considering these acts, it is in the first place to be pointed out that there is no section em-

powering a trade-union to sue or to be sued in its registered name, nor is there any provision as to constituting the society a corporation, so that it may be sued as such. And this is the more remarkable if, as the learned judge holds, it was the intention of the legislature that a trade-union was to be sued in its registered name, seeing that when it was desired that a society should sue or be sued in its registered name the legislature knew well how in plain terms to bring about such a result. For instance, in the Companies Act, 1862 (25–26 Vict., c. 89), by sect. 6, it is enacted that seven or more persons may be registered, and the section goes on to enact that after registration they shall form an incorporated company, with or without limited liability. The first part of the section is reënacted in the Trade Union Act (in sect. 6) of 1871, but the last part about incorporation is pointedly omitted. . . . It is true that the Amalgamated Society of Railway Servants is the registered name of the trade-union sued, but how does this fact of itself, without more, render the society an entity capable of being sued in that name? The mere registration has no such effect. Mr. Justice Farwell does not suggest in his judgment that in the Trade Union Acts he can find any sections in terms authorizing an action against a trade-union in its registered name, or that by the Acts trade-unions are incorporated. But the learned judge says the legislature has legalized it — *i. e.*, the trade-union — and it must be dealt with by the courts according to the intention of the legislature. The learned judge says: 'Although a corporation and an individual or individuals may be the only entities known to the common law who can sue or be sued, it is competent to the legis-

lature to give to an association of individuals, which is neither a corporation nor a partnership nor an individual, a capacity for owning property and acting by agents; and such capacity, in the absence of express enactment to the contrary, involves the necessary correlative of liability, to the extent of such property, for the acts and defaults of such agents, — in other words, the liability of being sued in its registered name.' It is with regard to this last paragraph, which is the basis of the judgment, that, with all submission, we cannot agree. When once one gets an entity not known to the law, — and therefore incapable of being sued, — in our judgment, to enable such an entity to be sued, an enactment must be found, either express or implied, enabling this to be done; and it is not correct to say that such an entity can be sued unless there be found an express enactment to the contrary. Where, in the Trade Union Acts, is to be found any enactment, express or implied, that a trade-union is to be sued in its registered name? Express there is none, and it is clear that a trade-union is not made a corporation. . . . In our judgment this has not been omitted in error. . . . Moreover, by section 9 of the Act of 1871, it is expressly enacted that the trustees of a trade-union registered under the Act, or any other officer of the union who may be authorized to do so by the rules, may bring or defend any action in any court of law touching the property of the trade-union, — a most remarkable section if, as is argued for the plaintiffs and held by the learned judge, the purview of the Act is that a trade-union can be sued in its registered name. If this were so, what is the good of this section expressly enabling the trustees or other officer

of the union to sue or be sued in respect of property? We can find nothing in the Acts wherefrom the inference is to be drawn that the legislature has enacted that a trade-union can be sued in its registered name, but, by reason of the language of the Acts, and what is omitted therefrom, if necessary, we should find the exact contrary. In our judgment, for the reasons above, a trade-union cannot be sued as is now attempted."

The opinions in the House of Lords are not argumentative, but merely affirmative of the opinion by Mr. Justice Farwell.[1] Lord Justice Lindley makes a brief reference to the fact that, as the legal title to the funds and property of registered trade-unions is vested in trustees, it may require suit on the judgment before such property could be reached to satisfy any claim for damages which might be recovered against the trade-union.

The precise question decided in the Taff Vale case was one of pleading, and so it appears to be understood by the English courts. The case is cited and followed in Giblan *v.* National, etc., Laborers Union in an opinion by Mr. Justice Walton, who says: —

"As was explained in the case of Taff Vale Railway *v.* Amalgamated Society of Railway Servants, a trade-union is a collective name for a number of persons acting for certain purposes in concert. If such persons, so acting in concert, commit an actionable wrong, the person injured by such wrong can maintain an action against them just as he would against other joint tort feasors; and so far as the form of the action is

[1] They are by the Earl of Halsbury, L. C., and Lords Justice Macnaghten, Shand, Brampton, and Lindley.

concerned, it may be brought against either representative defendants, who, as Lord Macnaghten said in the Taff Vale case, fairly represent the whole body, or they may be sued in and by their collective name — that is to say, in the name of the union. It must therefore be remembered that the 'union' which is made a defendant in an action is not a corporation or legal person, but is really the whole body of individual members of the union, described for convenience by their collective name." [1]

It appears that the suggestion of Lord Justice Lindley was adopted by the plaintiffs, and that their pleadings were amended so as to include as defendants the names of the trustees of the property and funds of the association. Accordingly, the case came on regularly for trial on December 19, 1902, under the title of The Taff Vale Railway Company *v.* The Amalgamated Society of Railway Servants, Richard Bell, general secretary, James Holmes, organizing secretary, and Philip Hewlett, George Walock, and John Pilcher, as trustees of said association. The trial was had before Mr. Justice Wills and a special jury in the King's Bench Division. The claim for damages amounted to £24,626. After hearing the testimony and the arguments of counsel, the trial court submitted three questions, to which the jury returned answers within ten minutes without leaving the box. These questions and the answers thereto were as follows: —

Question 1. "Did the defendants conspire together to molest the plaintiffs by unlawful means?" Answer. "Yes." Question 2. "Did they or any of them persuade the men whose notices had not expired to break

[1] (No official report.) *Law Times* report, vol. xviii. p. 500.

their contracts?" Answer. "Yes, all of them." Question 3. "Did they or any, and which, of them authorize and assist in carrying out the strike by unlawful means?" Answer. "Yes, all of them." By agreement of counsel, the assessment of damages was left to the court.[1] The injunction was continued against all of the defendants.

Mr. Justice Wills, in his remarks to the jury, used the following language: —

"Strikes are dangerous things. Here was an army of 1,200 excited men without sectional leaders under Bell's command. It was childish to say that the leaders were not responsible for the acts of the men under their orders because they did not order the particular acts. Frankenstein created a monster which went about doing damage. If Frankenstein had been sued for that damage in an English court of law, could he have escaped liability on the plea that he was not responsible? No doubt, Bell and Holmes approved of the violence committed and the damage done no more than Frankenstein did, but that did not afford an escape for legal liability. Then the Blackleg Circular was a most important document. 'Blackleg' was, among the workingmen, a word of terror, and as a word of terror it was used in those circulars. 'Intimidation' had been confined by judicial decision to that which raised a reasonable apprehension of personal violence. Did not the reference of being known as a 'blackleg' amount to a threat? And these acts of violence were in some cases reported to the committee-room as a triumph."

[1] The company agreed to accept £23,000 as a settlement of all claims. The society paid out some £27,000 more in the case, for costs of both sides. After paying this £50,000, the society had in its treasury £274,000.

In the opinion of Mr. Steffee, the writer of the article here currently quoted ("American Law Review"), the decision in the Taff Vale case "is a just one in so far as it fearlessly sustains the principle that the test of civil liability for damages is whether the injury was the natural incident or outgrowth of the existing relation of the party doing the injury to the condition out of which the act arose (Cooke on "Trade and Labor Combinations," 1898, sec. 2, and cases cited); in so far as it discards the question of intent to injure as constituting an element of civil liability; in so far as it fixes the liability upon the whole body of the organization which by its authorized agents and leaders produced the damage; in so far as it holds that, inasmuch as the property of the defendant association was held as a general fund subject to be used wholly, if necessary, in the furtherance of a strike, the damages which may be assessed are properly made payable out of such fund; and in so far as it places trade-unions on an equality before the law with defendants of other classes who are liable to be sued as such in their collective names without resorting to the expensive and generally abortive method of suing a large body as *joint tort feasors*. But, on the other hand, the question arises, was the decision appropriate to the conditions and circumstances which brought the case before the court? Is it *not* judge-made law? The Master of the Rolls pointed out in his decision that the power to create a new legal entity liable to be sued as such is vested in the legislature. Is not this decision an encroachment upon the legislative department of the government? Would not the same arguments as those employed by Mr. Justice Farwell and the House of Lords apply with equal force

to unincorporated social clubs, beneficial societies, religious organizations, and other associate bodies, which might sanction acts of certain of their members from which damages to the property or business of another had resulted? The opinions of Mr. Justice Farwell and of the Lords Justices manifest impatience, if not prejudice, arising out of the economics of the condition produced by the strike and the methods employed by the strike leaders to enforce their demands. The language used by Mr. Justice Wills, in his instructions to the jury, is severe and uncalled for.[1] "

The lay mind will doubtless coincide with Mr. and Mrs. Webb in the belief that this famous decision, if taken as simple construction of the existing statutes, is bad law, since plainly nothing was farther from the mind of Parliament in 1871 than to grant such powers of suing and being sued.[2]

[1] Mr. Steffee cites the case as follows: Taff Vale Railway *v.* Amalgamated Society of Railway Servants, 70 L. J. K. B. 905; rev'ng *s. c.* (1901) A. C. 426; *s. c.* (1901) 1 K. B. 170; *s. c.* 70 L. J. K. B. 219; and also refers to the *London Times* (daily) of December 20, 1902.

[2] See Mr. George Howell's statement in *Trade-Union Law*, pp. 39–41: "The question of picketing was not raised or referred to in the Court of Appeal; the judgment dealt with the liability and responsibility of the Union, as such, in an action at law involving damages — suing and being sued as a registered body. As to the intention of the Legislature in this respect I can speak with some authority, as I had more to do with the negotiations respecting the enactment of the Trade Union Acts, 1871 and 1876, during their passage through both Houses of Parliament, than any other living man. The Members of Parliament who were more or less the exponents of the views of trade-unionists at that period were Mr. Thomas Hughes — the late Judge Hughes; the late Mr. A. J. Mundella; the late Sir James Stansfeld, and Mr. William Rathbone, who is, I am glad to say, still living. Lord James of Hereford and Sir William Harcourt had more to do personally with the Labour Laws, and the Trade Union Act, 1876, together with the repeal of the Criminal Law Amendment Act, 1871; but in-

The "Observations" by the Duke of Devonshire and others, recently quoted, are based largely upon the same construction of the trade-union laws pronounced

cidentally they were cognizant of the trend of workmen's opinion in respect of all the above.

"In my interviews with the then Home Secretary, Sir Henry Austin Bruce, afterwards Lord Aberdare, and they were many, some of which were private, at the residences of Sir James Stansfeld and Sir William Rathbone, others by public deputation at the Home Office, or interviews at the House of Commons, the question of empowering Trade Unions to sue and to be sued was often and often discussed. Some few were in favour of embodying such power in the Trade Union Bill, but the vast preponderating opinion was averse to it. Any provision of that nature was intentionally left out; the Home Secretary being quite as strong on that point as Messrs. Hughes, Mundella, J. Hinde Palmer, Serjeant Simon, and, so far as my memory serves me, the late Lord Coleridge. The representatives of labour and officials of Trade Unions, whose mouthpiece I then was, were strongly averse to any clause being in the Bill which would open the door to litigation. In this the Government concurred. The absence, therefore, of any express power enabling a Union to sue or to be sued was intentional on the part of the authors of the measure, and that intention was indorsed in the passage of the Bill through Parliament. Of course, the above remarks only relate to intention. From a legal point of view the Courts decide upon the facts of the case and the language of the statute, rather than upon the intention."

Mr. and Mrs. Webb say: "There has seldom been an instance in which a judicial decision has so completely and extensively reversed the previous legal opinions, and we do not hesitate to say, the conscious intention, thirty years before, of Parliament itself." (*Industrial Democracy*, Introduction to the 1902 edition, p. xxvi.) So, too, Professor Ashley: "From a purely historical point of view, considering the form of the Act of 1871 and the circumstances of its origin, I must confess that the argument of the Master of the Rolls seems to me unanswerable." But, he continues, "From the point of view of sheer logicality, the same is to be said, I think, for the arguments of Mr. Justice Farwell and the Law Lords. For once logic triumphed, almost ostentatiously, one may say, over history. . . . The logicality of the judgment is now recognized even by the eminent counsel whose business it was to maintain the opposite before the court, and it seems to commend itself, generally, to the legal profession." (*The Adjustment of Wages*, p. 176.) The American bar, so far as it has expressed itself on the matter, seems to be of the same opinion (see p.173).

later by the Master of the Rolls. But the unanimous decision of the five law lords is the supreme law of the land until it is overridden by some new and express act of Parliament. The efforts of English trade-unionists in the next election will probably be directed toward the choice of candidates pledged to the passage of a law virtually setting aside the House of Lords' decision. In the interest of industrial peace it is to be hoped, however, that wiser counsels will prevail, that the trade-unionists will accept the situation, and be content with a much-needed clearing-up of the laws otherwise affecting the unions.[1] A battle royal on this subject might possibly result in the passage of some such law as the Duke of Devonshire and his seven colleagues desired in the "Observations." That the question shall be decided on its essential merits, and not merely in accordance with some temporary political alliance is an issue greatly to be desired.

Another case of minor interest beside the Taff Vale Railway decision, but still of importance as showing the trend of the law to-day, is the Denaby case, in which Mr. Justice Grantham held that "a member of a union

[1] It is much to be regretted that the Royal Commission appointed in 1903, "To inquire into the subject of Trade Disputes and Trade Combinations and as to the law affecting them, and to report on the law applicable to the same and the effect of any modifications thereof," was not more wisely constituted. The English trade-unionists complain that "one of the most militant of employers" is to be found on the Commission, but not a single representative of labor, — Mr. Sidney Webb not being accepted by them as in fact a representative. The last Trade-Union Congress passed a resolution practically boycotting the Commission. The following are the members of the Commission: The Rt. Hon. Andrew Graham Murray, M. P., Lord Advocate (chairman), Sir William Thomas Lewis, Bart., Sir Godfrey Lushington, G. C. M. G., K. C. B., Arthur Cohen, Esq., K. C., and Sidney Webb, Esq.

can obtain an injunction against the society to prevent the spending of its funds contrary to its rules, on the ground that membership under the rules involves a contract which can be enforced." [1] Such a view goes still further toward bringing trade-unions, as now constituted, into line with corporations which have trust funds, whose "essential quality . . . viewed negatively . . . consists in the absence of complete ownership, with the power of arbitrary disposal, in any person." [2] In December, 1903, the principle of the Taff Vale Railway case was applied to Franklin Union, No. 4, of Press-feeders in Chicago. A verdict was found against it for illegal picketing, in disobedience of an injunction, and it was fined as a corporation. The boycott suits pending at Danbury, Connecticut, may furnish another instance of such use of ordinary law.

The firmest believers in the intrinsic rationality of the trade-union principle (myself among them) must hold that the unions in fact commit a grievous error in their opposition to incorporation as legal persons capable of suing if injured, and of being sued if injuring others, or breaking contracts with them — a right probably as ancient as the Twelve Tables. (These contracts, of course, cannot be legally binding unless the unions are incorporated.) In this opposition they are without the support of the great mass of friendly economists, who believe that nothing would be more wholesome for the trade-unions than to have their responsibility evened up to their power. Great power for good or harm they have already, but responsibility for harm they disclaim. The public conscience will not be long

[1] Ashley, p. 178 ; an appeal has been taken from this decision.
[2] H. O. Taylor, on *Private Corporations,* sec. 62.

in pronouncing with the economists on this plain issue of morals. There is to-day a crying social need for more responsibility in labor disputes. Incorporation corresponds to this need. When the trade-unions repent of their illogical and immoral unwillingness to become incorporated, and take their right position as corporations in that collective bargaining which is to be more and more the custom of the future, the prospect for industrial peace will be much brighter than it is to-day.

CHAPTER VII

AIMS AND METHODS OF TRADE-UNIONISM

THE ideals and ambitions which active, honest, intelligent men in the trade-unions cherish are ideals and ambitions which have been realized to a considerable degree in the advantages which many professional men and others already enjoy. It is no part of a high ideal for the clergyman, the teacher, or the workingman, that he shall become rich, but it is a just ambition of every man that he and his family shall have a comfortable human existence; that he shall obtain the ordinary pleasures of civilized life; that he shall, above all, reap increasingly those benefits of education, culture, and refinement which, from their very nature, cannot be a monopoly of the rich. Workingmen are reaching out for these desirable things more and more eagerly. They wish to see their present standard of living gradually raised, and the industrious worker assured of a minimum wage that shall procure him comfort, at least, under a common rule for the industry. It is the interest of every society that the conditions of industry should leave ample room for talent and character among working people to assert themselves, that they may recruit the ranks of trade, commerce, and the professions, and cultivate every field of civilization. Trade-unionism is the chief tool of the modern worker with which he would gratify his ambitions. It

is easy to exaggerate what it has accomplished. Nearly all the popular writers on the trade-union side do this to an extreme extent. Mr. Herbert N. Casson, for example, in his forcible little book on "Organized Self Help," attributes to trade-unions practically all the advances which the workingman has made in the last century and a half. Lecky, in his "Democracy and Liberty" (vol. ii. pp. 432 f.), was justified in making great abatements from these claims, on the authority of such writers as Jevons and Lord Brassey.[1] No fair-minded person can doubt, however, that trade-unionism is one of the greatest achievements of modern workmen, adopting the policy of "together."

The limitations of the power of the trade-unions are easily visible to the instructed economist. With all his friendliness toward the principle of combination, he sees that trade-unionism is an instrument which must be used with great discretion, if it is to do more good than harm. To reach the best results, it should be in the hands of the wisest workingmen,

[1] Herr von Nostitz, in his able work on the *Ascent of the Working Classes in England* (Jena, 1900), declares that this is not to be attributed to any one cause; that religious, moral, educational, and hygienic, as well as economic and political influences have played their part. The chief factors of progress have been three; first, the great working-class institutions for self-help, — trade-unions, friendly societies, and coöperative societies; second, the assistance given by members of the upper classes, such as Robert Owen, Lord Shaftesbury, and the Christian Socialists, and the influence of writers like Carlyle and Ruskin; and, third, legislation and the action of public authorities. Herr von Nostitz might well have added to these factors the influence of science and invention. The application of electricity as a motive-power on street cars, for instance, has probably done far more to enable work-people to live under wholesome conditions, at a distance from their work, than the efforts of many trade-unions in the same direction.

the aristocracy of their kind; certainly it is not a panacea, any more than it is a tool for boys.[1]

Mr. Clarence S. Darrow has recently been reminding organized workingmen, from the standpoint of the utmost friendliness, of the common danger of too great self-assertion on the part of the unions. The warning has been very much needed in the United States in 1903. It is most important that the trade-unions should disabuse their minds of the idea that they are the only factor of consequence in advancing the condition of workingmen. Trade-unionism is properly conceived as a permanent movement of workingmen, guided by a large self-interest, toward the gradual improvement of their condition. The large indirect results of such association are not for a moment to be undervalued, but the main motive should be frankly confessed, and this is the self-interest of a class. Every class knows its own interests best, and should be able to work freely toward the realization of them. The right of combination is now fully conceded to the workingmen of to-day. They must be held, therefore, strictly responsible for the manner in which they exercise the right, and their best friends are those who remind them most emphatically of the abuses of this right which

[1] Report of the Anthracite Coal Strike Commission, p. 65: "We believe it is unwise and impolitic to permit boys of immature age and judgment to participate in deciding the policy and actions of a labor union. We think that no one should have such voice in the affairs of a union, until he has reached his legal majority. Those affairs are momentous, and are of growing importance. They should be directed by men who have a realizing sense of the responsibilities of life, both as to family, as to associates, and as a society. This does not mean, of course, that minors should not belong to the union, but they should not act as, nor vote for, delegates to conventions which consider or determine strikes."

they attempt to commit. If a large number of them choose to combine for the gradual elevation of their lot in ways that seem best to them, other workmen should be allowed by them, as by society in general, to abstain from such combination, or to combine in other ways if they see fit. This is the simple doctrine of "fair play" for all, — a doctrine not to be obscured by sophistical claims by the unions that they are the one true church of labor, beyond which there is no salvation.

The programme of labor reform, like the programmes of other reforms, is not to be carried out by leaps and bounds; it can only be accomplished by slow, steady pressure upon the employers of labor to get for the workingman his fit and fair share of the whole product of the industry. What is "fit" and what is "fair" cannot be determined by abstract reasoning, or by purely moral consideration. It will be determined by reasonable men through calm and sober negotiations between the parties concerned, and the processes of ordinary reasoning; to use an expressive phrase of the economist, by the "higgling of the market."

When we consider the fundamental aims of the trade-unions, we see that the ideal of the intelligent workman is, in a few words, the steady improvement of his economic and social condition. He sees himself surrounded by persons and classes more comfortably situated than himself as regards the good things of civilization, and his natural ambition for himself and his family is first of all to gain a larger income, which shall make his life easier and more enjoyable. Mr. Frank K. Foster, a prominent trade-union leader of

Boston, well said, in a paper read before the fifteenth annual meeting of the American Economic Association, in December, 1902: "To obtain a fair return for useful labor, to be able to provide for times of sickness and old age, to place those dependent upon one in security against want, to obtain sufficient leisure to enable one to lay hold of things which make the possibilities of human life larger than those of the existence of the brute creation, — these things are the universal desire of civilized men, as well as the objects sought to be attained by trade-unionists." Using "aims" as synonymous with "ideals," the preamble to the present constitution of the Knights of Labor states these aims in substantially the same language as that which Mr. Foster used, and I may quote them as a more official utterance. (The Knights have been more given to comprehensive statements of the theory of trade-unions than the American Federation of Labor has been.) "We declare to the world," says this preamble, "that our aims are: I. To make industrial and moral worth, not wealth, the true standard of individual and national greatness. II. To secure to the workers the full enjoyment of the wealth they create; sufficient leisure in which to develop their intellectual, moral, and social faculties; all of the benefits, recreations, and pleasures of association; in a word, to enable them to share in the gains and honors of advancing civilization." "In order to secure these results we demand at the hands of the law-making power of municipalities, States, and nation" — and then follows, in the remaining twenty-two articles of the preamble, a long list of specific reforms, political as well as industrial, which the Knights of Labor deem legiti-

mate deductions from this broad statement of their aims.

To put the matter, however, more briefly and less politically, the present ideal of the trade-unionists embraces three particular concrete reforms of the first importance to their welfare. The first is a steady rise in wages to the highest point at any time to which the pressure of "organized labor" can bring the employer. The second is a gradual shortening of the working day to eight hours. The third is the improvement of the general conditions of labor in the direction of safety, sanity, and convenience. For the last ten years the first of these demands has usually been called the demand for "the living wage," or "a fair day's wage," as the one means of raising "the standard of life." The second has led to "the eight-hour movement." The third embraces a great variety of matters which have been included in the "factory legislation" of England and America.

These concrete reforms the trade-unionist seeks to accomplish by certain methods which might be called his secondary aims, as they are used purely to bring about the accomplishment of the primary aims. The unionist desires to see the trade-union in his own trade in complete control of the supply of labor for that trade. His method, therefore, in this direction is the formation of a labor trust, a combination of workingmen intended to be at least as effectual as any that has been formed in the field of production. This class aim is one to be expected, and the attempt to establish a monopoly of labor is as natural as the attempt to establish a monopoly in any line of production. The trade-union and the trust, apart from the abuses of

association, are incontestably natural developments. When the workers in any trade are well "organized," the unionist takes his stand decisively for the principle of "collective bargaining," ruling out as illegitimate the claims of any member of the union to bargain with the employer for himself. This method, again, is entirely logical and in accordance with the movement of modern industry. Collective bargaining, developed to its highest power in covering an entire trade in a given country, implies that the trade shall be governed by a "common rule," in the phrase of Mr. and Mrs. Webb. The common rule is a necessary deduction from the method of collective bargaining; in fairness the same regulations which prevail in one locality in a certain trade should be extended, so far as the circumstances of the case allow, to all other localities in the same country and to all members of the same trade. A fundamental principle of the common rule is the effort to raise the standard of living by fixing a "minimum wage" for less than which the trade-unionist will not work, except in cases of manifest inability to earn so high a wage — and such cases may be included in special arrangements. This minimum wage is the sum demanded by the union in its negotiations with the employer: it is an amount which will allow the thrifty workingman to provide for himself and a family of average size the necessaries of life and a decent share of its comforts. Only in times of extreme stress will he contemplate the surrender of any of the ordinary comforts of life which have been enjoyed by his class for years and have thus become a portion of their well-recognized "standard of life." From the point of view of the impartial spectator it is certainly

good policy for the trade-unionists to seek to impress strongly upon the mind of the employer the necessity of this minimum wage, and to extirpate from that mind the notion that he can with real profit to himself reduce wages to the point of securing only the bare necessities of life.[1]

Combination, collective bargaining, the common rule, and the minimum wage are thus parts of a sound trade-union theory. They are commending themselves more and more to the impartial judgment of modern economists and sociologists. These students see that a

[1] Ricardo's greatly misunderstood "iron law of wages" may be referred to here. In his *Principles of Political Economy*, ch. v. § 35, he says: "The natural price of labour is that price which is necessary to enable the labourers, one with another, to subsist and to perpetuate their race, without either increase or diminution." Professor Gonner, in his edition of Ricardo in the Bohn Economic Library, explains this last clause to mean "in the same position of life or comfort." Ricardo was often an ambiguous writer. But evidently "increase or diminution" refers to the number of laborers, as the next sentence makes plain. "The power of the labourer to support himself and the family which may be necessary to keep up the number of labourers, does not depend upon the quantity of money which he may receive for wages, but on the quantity of food, *necessaries, and conveniences become essential to him from habit*, which that money will purchase. The natural price of labour, therefore, depends on the price of the food, *necessaries, and conveniences* required for the support of the labourer and his family." The words I have italicized sufficiently indicate that Ricardo did not intend by the word "subsist" in this famous utterance, mere animal life just upon the verge of starvation; but rather he had in mind "a living wage" as the trade-unionist understands it to-day. A little later Ricardo speaks of the "moderate comforts which the natural rate of wages will afford." The natural price of labor is not absolutely fixed and constant. "It varies at different times in the same country, and very materially differs in different countries. It essentially depends on the habits and customs of the people. . . . The friends of humanity cannot but wish that in all countries the labouring classes should have a taste for comforts and enjoyments, and that they should be stimulated by all legal means in their exertions to procure them."

class can best defend itself, and that these principles embody a line of reasonable self-defense on the part of working people. The principle of the common rule for an industry is, of course, subject to exceptions in its application to different parts of the same state or country, where conditions and circumstances differ greatly. In regard to the principle of the minimum wage the trade-unionist justly declares that when the trade-union calls for a certain wage by the day or week or month, under a general agreement, this is not fixing a *maximum* wage. No employer is thereby prevented from paying more to exceptionally skilled workingmen. The employers do not often object to the plan in itself. Their common objection in a specific case is that the minimum daily wage is set too high to allow the average return to the manufacturer, and that, when piece-work is the rule, the rate per piece asked by the union is much too high for the skillful workman. In both cases, they claim that the intention is to enable the idle or incompetent workman to receive "a fair wage" without rendering for it "a fair day's work." These objections, however pertinent in particular cases, do not affect the soundness of the principle in itself. We are here concerned not with possible abuses of the principle, but with its general rationality. Time and experience seem to favor the trade-union contention. When conditions of industrial harmony widely prevail, and the great body of employers appreciate the reasonableness of the trade-union policy, conceived on large lines, the whole question between the two parties becomes one of fairness and good sense in the application of the policy by the trade-unions to the specific circumstances of the industrial situation.

Here we strike a fundamental point in trade-unionism. Relatively to the vast mass of the employed in all industries, the employers form a small aristocracy. The trade-unions, on the other hand, are a huge, organized "industrial democracy," as Mr. and Mrs. Webb happily call the movement. The trade-unions would carry into industrial life the democratic method, which has made such great strides in the political life of modern man. Now Mr. Bryce has admirably stated a most important distinction in regard to the matter of the government of a people by itself. He points out, in his "American Commonwealth" (first edition, vol. i. p. 451), the difference so often forgotten in a democracy, between what the people want — a thing which they know very well — and the question of the best means to get it — which is quite another matter. Mr. Bryce's statement applies with almost as much force to an industrial as to a political democracy. "Every question that arises in the conduct of government is either a question of ends or a question of means; and errors may be committed by the ruling power either in fixing on wrong ends or in choosing wrong means to secure those ends. It is now, after long resistance by those who maintained that they knew better what was good for the people than the people knew themselves, at last agreed that, as the masses are better judges of what will conduce to their own happiness than are the classes placed above them, they must be allowed to determine ends. This is in fact the essence of free or popular government, and the justification for vesting power in numbers. But, assuming the end to be given, who is best qualified to select the means for its accomplishment? To do so

needs in many cases a knowledge of the facts, a skill in interpreting them, a power of forecasting the results of measures, unattainable by the mass of mankind. Such knowledge is too high for them. It is attainable only by trained economists, legists, statesmen. If the masses attempt it, they will commit mistakes not less serious than those which befall a litigant who insists on conducting a complicated case, instead of leaving it to his attorney and counsel. But in popular governments this distinction between ends and means is apt to be forgotten. Often it is one which cannot be sharply drawn, because some ends are means to larger ends, and some means are desired not only for the sake of larger ends, but for their own sakes also. And the habit of trusting its own wisdom and enjoying its own power, in which the multitude is encouraged by its leaders and servants, disposes it to ignore the distinction even where the distinction is clear, and makes it refer to the direct arbitrament of the people matters which the people are unfit to decide, and which they might safely leave to their trained ministers or representatives. Thus we find that the direct government of the multitude may become dangerous, not only because the multitude shares the faults and follies of ordinary human nature, but also because it is intellectually incompetent for the delicate business of conducting the daily work of government, *i. e.*, of choosing and carrying out with vigor and promptitude the requisite executive means. The fact that it is called by a singular name has made many forget that 'the people' means nothing more than so many millions of individual men."

When the trade-unionist considers the means to be

used in order to attain his ends, the question of strikes and boycotts arises, and the issue is raised at once whether these common methods are justifiable in themselves, or with their usual accompaniments. We shall fully consider these phenomena later, and the kindred phenomena of the lockout and the blacklist. It will be sufficient here to say that the abstract right to strike, *i. e.*, to leave the employment of a particular person, in concert with a large number of other employees, is now beyond dispute in law or equity. The too common accompaniments of strikes in the way of intimidation and violence are apt to be regarded differently, as one is a trade-unionist, an employer, or an outsider to the dispute. The boycott is generally defended by the trade-unionist; it is sometimes palliated by the public, but it has no standing before the courts or with the economists. It is here that the main divergence between the actual habits of the trade-unionists of to-day and the judgment of impartial outsiders comes in.

The modern press, the pulpit, and the general public, as well as the economists and a large proportion, at least, of the employers of labor, unhesitatingly endorse the right of the workmen to combine. Whether using the phrases or not, the powers that shape public opinion agree in favor of collective bargaining, the minimum wage, the common rule, and the elevation of the standard of living among working people. It is generally conceded by sensible people to-day that the question of industrial peace is mainly a question of the right means to be employed by trade-unionists in attaining their ideal. The steady trend of opinion among the most intelligent employers of labor at pre-

sent may be said to be strongly in favor of abandoning their old and not unnatural hostility to combinations of workmen *per se*. The modern employer of labor who really opposes the principle of combination among workmen surely occupies a remarkably illogical position, while he eagerly practises the principle of combination with his fellow manufacturers, in the formation of trusts on a large or small scale. At the same time, logic cannot be said to make its chosen home with the trade-unionists, when they denounce with fervid rhetoric all monopolies and trusts, except the monopoly and trust of which they themselves are the leaders and advocates. The true line for the modern employer of labor to take is that the combination of employers over against the combination of the workmen is good policy; that the employers' association and the trade-unions are equally justifiable.

In getting light on this question of the right means to ends admitted to be proper, we cannot place too much stress upon the fact that production is the result of a bargain. As in all other transactions of a commercial nature, where the thing bought and sold is not labor, so with labor; the result of discussion between rational men is, "Take it, or leave it!" One party must accept the terms offered by the other party, or reject them. If it accepts them, well and good; the bargain is consummated and production goes on, under the terms of the bargain. If the bargain is not made, then the parties should leave each other alone until they can get together again, and make a bargain. If later efforts at bargaining fail, other parties should have a free field to come in and seek to make a bargain; other workmen should be

free to contract with the employers; other employers to contract with the workmen. This is the plain dictate of common sense and reason in regard to the process of bargaining in a civilized world.

A certain moderate amount of inconvenience will be endured patiently by a community which believes in discussion as the best means of settling all differences between man and man, or men and men. This is a tribute which civilization pays to reason and its unarbitrary ways of solving questions. It is best to leave a certain area open where public opinion may play freely, and express itself not by force, not by law, but by its diffusive influence through ordinary converse, through the pulpit, the press, and the "platform" in general. In England or the United States the public will, then, think it natural that the employer or the employee, in case of a dispute, should begin by taking an extreme position. It is part of the natural process of bargaining, human nature being what it is, that each party shall allow itself room for making concessions. Threats and vaporings from either side will, of course, alienate the favorable opinion of the judicious from the start. Demands which are plainly preposterous must be soon abated, and the margin allowable for mistakes or misstatements as to the facts on which the demands are based will be early exhausted. Prejudice is soon excited against a belligerent bargainer, whose desire evidently is not to make a fair compromise, but to coerce the other party. While the preliminaries are going on, the public is patient, but it is judging the situation, and each of the disputing parties should have good sense enough to remember this, and so conduct itself as to win for

itself the powerful influence of a general public prepossessed in its favor because of its moderation and restraint.

The preliminaries must be gone through, but they will not admit of long or indefinite extension. The public expects the two parties to settle down to the business in hand, which is to make a bargain. If they are making progress toward it, the public must be content, however slow at first the rate of progress may seem. The one thing which the public has no call to endure is a disposition on the part of both parties to decline altogether this, their proper business, of making a bargain which shall be reasonably fair to both. Perfect justice is not to be expected to appear in any such agreement. Enough if this year's agreement is a little nearer than last year's to entire fairness. Reasonable compromise, not perfect justice, should be the aim of both employer and employed.

One of the worst enemies of reasonable compromise in the discussion of practical matters of business, like wages and contracts, is rhetoric, with its intrusion of metaphor, mythology, and personification in the handling of concrete issues. If, for instance, all writers and speakers on labor disputes could be restrained by law for the next few years from even mentioning "the conflict of Labor and Capital," and if judges could be persuaded to refrain from alluding to "Frankenstein and his monster," when issuing injunctions against trade-unions, it would be no small gain for industrial peace. An inordinate amount of disturbing passion is aroused by wild declamation on this vague "conflict." If the discussion is brought back to the tangible matter of the actual merits of A, B, C — real persons in

the place, employing workingmen — and X, Y, Z, — those actual workingmen whom we know, — one can make some progress toward a just solution of specific difficulties.

As a simple matter of fact, the unionist's part in the discussion of disputes between employers and employed is the one more apt to be overloaded with rhetorical riches in the way of declamation and metaphor. The untrained mind inevitably falls into this rude poetry. To restrain one's feelings, to talk the language of prose, to appeal to facts, and to give one's self submissively into the hands of logic is not an easy thing for any one. Few enough do it on the side of the employers or manufacturers who take to discussion of labor matters! But the employers, and those who write as advocates of the employers, are free from many temptations in this direction. The man of affairs is by nature or by habit averse to wasting time on "tall talk;" he always prefers a "business proposition," expressed in figures of arithmetic, not in figures of speech. We may properly expect an improvement, however gradual, in the tone of labor literature in this respect, as knowledge of economics and familiarity with the tone of scientific discussion of economic subjects are more widely diffused among workingmen.[1]

A long time may reasonably be allowed to the trade-unionists to get rid of the ambitious rhetoric which

[1] Mr. John Mitchell's recent volume, *Organized Labor*, shows a great superiority, in its straightforward, common-sensible style, over such rhetorical papers as were presented to the American Economic Association (of all audiences) at Philadelphia, in 1902, by Messrs. G. E. McNeill and F. K. Foster. Mr. Henry White should be named by the side of Mr. Mitchell as a unionist able to "write like a human being," as Bagehot would say, on labor subjects. (See the Report of the above meeting.)

too often disfigures their literature and robs it of the power for conviction with the judicious that properly belongs to their case well stated. But there is one reformation which they cannot set about too soon or accomplish too thoroughly. This is the complete dismissal from their minds of the notion that they are engaged in a peculiarly divine mission, so that they may look upon themselves as a church of the faithful, and upon all others who do not join them or assent to their doctrines as infidel and impious. I shall need to recur to this point in speaking of the treatment of non-unionist workmen by unionists, but I mention it here as it bears upon the quality and tone of trade-unionist literature and discussion. To use the language of plain fact, the trade-unions are composed of men who have united, very obviously, to promote their own material welfare. They seek to drive a better bargain with the employer, by means of the combination they have formed, than they could as individuals, to get higher wages and a shorter day. This is a business matter of immediate self-interest. They are properly trying to obtain a larger share of the national dividend for the families of workingmen as a class. They have chosen the wise and effective way to accomplish their object by uniting their interests. The increase of income desired means a more comfortable, a more pleasant, a more satisfactory life for themselves and all who are dear to them. But getting a larger income is not in itself a holy thing; the effort to obtain it is not a genuine crusade against a world of sin; enlisting in this army does not stamp a man as highly moral or saintly. A combination of teachers or of grocers to increase their incomes would have fundamen-

tally as many reasons as a trade-union has for considering itself an army of the living God.

From a social point of view, it is indeed most desirable that the workingmen of every civilized country should combine and work heartily together for the improvement of their lot. It can only be improved, however, by making a more advantageous bargain with another class of people who have an equal right as human beings to consider their own interests. If the mixture of rhetoric with business is bad, the mixture of pseudo-piety with business is still worse, and of all varieties of this mixture, the mixture of class-piety with business is the worst, especially when the end is taken to justify any means. The intolerant, excommunicating spirit which nearly all churches in times now happily past have practised, when the state allowed them to do so, is the last spirit which should characterize a movement for the welfare of man. We have a "natural right" (that is to say, it is a part of our instincts) to defend our own interests as individuals; every sound system of ethics justifies an enlightened self-regard. We have an equally good right to associate with others of our class to forward the interests of that class as such. But we have no right to represent ourselves as dedicated to utter unselfishness, pure humanity, and the will of God, when we are simply trying to make a good bargain, in exchanging our labor-power or our mind-power for a higher compensation! Trade-unionism needs to divest itself of cant, and to remember in a cool hour that its dealings with employers are essentially the same thing that other millions of human beings are doing every day, — bargaining for the exchange of services or commodities.

These do it all the more effectively the less they are troubled by a flood of emotion, the flowers of rhetoric, or the pride of orthodoxy!

Collective bargaining, I repeat, is a business matter, and quietness of tone is a first requisite to the reasonable transaction of it. Trade-unionists on a strike need only search their own hearts carefully to discern that the motive for their zeal is not love of all men, and love of God as the Father of all men, but a very excited and very intense attachment to their own interest. But again we must say that the rational objection here is not to the pursuit of self-interest in itself, but to the irrational extremes to which it is often carried, and to the attempt to disguise it under high-sounding words.

In a time of business prosperity the unions, pursuing their rational self-interest with animated moderation, succeed in making an advantageous bargain, as to wages or hours, with the employers. It stands to reason that they must be content to accept comparatively disadvantageous terms at other times when the conditions of the market for labor and for the products of labor are not prosperous. A good bargainer is one who makes the most as well as the best bargains, and he can only make the most and the best bargains by willingness to *give*, in what, for him, are bad times, as well as by anxiety to *take*, in what, for him, are good times. It was a surprising commentary on such truisms as this when the president of the American Federation of Labor, in a time (November, 1903) of closing factories and falling prices, exhorted the workingmen of the country not to accept any reduction of wages, but to demand that the employers keep up wages, re-

duce production, and maintain prices.[1] Fortunately, American workingmen are made, for the most part, of better stuff as bargainers than such counselors, and within a month they were accepting by the ten thousand, without a strike of any consequence, the inevitable reduction of wages which the hardening times necessitated.

The "living wage" is a term too often surrounded by a cloud of rhetoric. We have seen what Ricardo's position was. He held that it includes the means of procuring the necessaries, conveniences, and comforts which have become habitual to the workingman in the society in which he lives. To be concrete, how large a sum must this be in a particular country to maintain a decent standard of life for the workman, his wife, and three children, say? Mr. Keir Hardie declared that it should be three pounds sterling, or $15.00, a week for a miner. The London City Council has estimated the sum more reasonably at twenty-four shillings, or $6.00, a week for the London artisan. Professor Alfred Marshall's estimate practically coincides with this. Mr. John Mitchell believes that $12.00 a week, or $600 a year, is the minimum amount which the American unskilled workingman

[1] "It will be helpful to consider the policy pursued by employers during similar periods in the past, . . . a policy which has proved not only injurious but perversive of the very purpose for which it was inaugurated. I refer to the policy of reducing wages as a means to tide over, or emerge from, industrial depression. . . . It is the height of economic unwisdom to curtail the consuming power of the masses as a means to industrial revival or prosperity. . . . The working people should resist any attempt to reduce their wages or to increase their hours of labor. . . . We urge as a way out that wages be maintained, even if necessary to resist reductions; that as a substitute for discharges of workmen the work to be performed be divided." — Mr. Gompers, in his annual address.

should be willing to accept.[1] This estimate was not intended to apply to country life, on one hand, or to life in great cities, on the other hand, but to the great mass of workmen living in towns and cities having from 5,000 to 100,000 population. The American standard of living should mean, "a comfortable house of at least six rooms, — a bath-room, good sanitary plumbing, a parlor, dining-room, kitchen, and sufficient sleeping room that decency may be preserved and a reasonable degree of comfort maintained." It should mean "to the unskilled workman, carpets, pictures, books, and furniture with which to make home bright, comfortable, and attractive for himself and his family, an ample supply of clothing suitable for winter and summer, and above all a sufficient quantity of good, wholesome, nourishing food at all times of the year. The American standard of living, moreover, should mean to the unskilled workman that his children be kept in school until they have attained the age of sixteen at least, and that he be enabled to lay by sufficient to maintain himself and his family in times of illness or at the close of his industrial life . . . and to make provision for his family against his premature death from accident or otherwise. This, or something like this, is the American standard of living, as it exists in the ideals of the unskilled workingmen."

The "standard of comfort" thus defined by Mr. Mitchell does not appear extravagant in its demands. It seems to include only the essentials of a decently comfortable existence in the United States in the year 1903. These could only be procured for $600 a

[1] See his *Organized Labor*, pp. 116–118.

year by the practice of thrift and temperance. That the national dividend for 1903, if equitably distributed, would guarantee such a sum to every workingman Mr. Mitchell asserts emphatically (p. 115), but he does not present such figures of this dividend and its possible division as Professor William Smart gives in his paper on "A Living Wage." The latter shows that one third of the workingmen's families of Great Britain might receive 24 shillings a week each, the other two thirds £100 a year; "trades" families might receive £150 each; the "middle class" families about £400 each, and the "upper class" families an average of £2,000 a year.[1]

In the absence of any figures showing the national dividend or income of the United States and the number of families of workingmen, tradespeople, professional men, etc., it is impossible to pronounce definitely that each workingman's family could receive $600 a year, and all other classes of families be treated fairly in the distribution. The probability seems to be that the allotment of such a sum to each of the families of the working-class population (if made by the State or by some other power) would not materially reduce the income of other classes; certainly it would not reduce other classes to poverty if the remainder of the national dividend were evenly divided among all other families of the country.

But the question, not of the desirability of such an income for the average workingman's family, but of its feasibility, is one to be answered only by the effort

[1] *Studies in Economics*, pp. 35 f. These figures are based on Sir R. Giffen's estimate of the national capital and Mulhall's estimate of the number of families.

to obtain it. The amount is surely not unreasonable in itself considered. The point is to discover if the national dividend of the year will suffice to pay this sum and leave a sum which will satisfy the other factors engaged in production, as a "fair" return for their work also. *Solvitur ambulando!* Trade-unions and employers must work out this problem in actual life. Wages must come out of the product. Interest, profits, salaries for management, and allowances for repairs and for depreciation must also be paid out of the product. If the product of a certain establishment suffices to return the common rate of interest on its capital actually invested, the usual salaries for able managers, and the sum necessary to keep the plant in good condition, and will then give the workingman an average wage of only $1.50 a day, it is evident that no bargaining, however ably conducted by a trade-union and an employer, will bring about any other result. If, in point of fact, these other expenses are fixed and reasonable, then the wage-earners must divide the remainder of the product among themselves and come out of the transaction with $1.50 a day as their wage.

One alternative is, if possible, to beat down the capitalist and the manager to accept less for a time than the common rate of compensation for money loaned and ability employed in keeping up the business. But this policy could not be followed for any length of time. The capitalist would withdraw his capital, to invest it in some more profitable business, and the manager would transfer his abilities to a post with a higher salary, and the establishment would be closed. The more reasonable course would be to in-

crease the product, if possible, to such a sum as would give the workmen the fifty cents a day additional which they demand. The question whether or not this can be done is purely practical.

A great advantage in the system of collective agreements is that such questions are not held to be decided by the bald assertion of the employer that he is getting at present only a fair return for capital and ability. In collective bargaining, under pressure from the "able bargainer" with whom he has to negotiate (*i. e.*, the trade-union), he must produce facts and figures to sustain his contention. It is equally plain that the union, when making a demand for an increase of wages, must be prepared to reinforce the demand with solid arguments based on profits realized, the condition of business in general, and the cost of living. As in all other bargaining, the probable result is a compromise, neither party gaining its full demand, *e. g.*, that wages shall be lowered, or that they shall be raised so many cents a day. An increase finally attained may serve, if the change has been moderate, as a sufficient precedent for fixing wages under a new agreement for another year at the same figure. Thus it initiates a new "custom of the trade." If the change, on the other hand, seemed to the employer too great to be really "fair," he will meet the next demand for an increase in a very different spirit.

The trade-union is justified in following the usual methods of the able bargainer in its dealings with the employer, — in representing conditions as highly favorable to itself and very unfavorable to the other party; as likely to improve for itself and to grow worse for the other; in rating what it has to sell, *i. e.*, labor, as

very valuable, and what it has to buy, *i. e.*, wages, as comparatively valueless. These are old tricks, to be expected from both sides of the bargain. What the public has a right to expect is that neither side will permanently becloud the issue, which is, whether or not a bargain would be reached by reasonable men in the respective positions of the employer and the employed. This finally comes to be a matter of addition and subtraction and division of figures which can be determined by experts, if necessary. The public will judge of the rationality of the bargainers here, as elsewhere, by the time that they actually take to conclude a bargain. The phrase "a living wage" must not be juggled with, to bear two meanings at the same time: one "a wage necessary to keep the wage-earner barely alive," and the other "a wage such as he deems desirable to raise the standard of comfort prevailing in his class." A movement for a living wage in the former sense will, of course, have the approval of all persons in ordinary times. A movement in the second sense will be approved by the judicious in case, and only in case, they believe that the increasing product of the industry will justify the increase of wages. It will probably receive such an approval, therefore, in good times only. When the trade-unionist declares, "We only want a living wage," the inquiry, then, is always pertinent, "What kind of a living do you mean?" The Anthracite Strike Commission found the claim of the contract miners that they could not maintain the standard of life on the wages received (which the commissioners put at an average of $560 a year) one "not to be fully allowed in the terms in which it is made" (Report, p. 46), while they granted an increase

of 10 per cent. on account of the increased cost of living.

"A gradual reduction of the hours of labor to eight," as the platform of the Knights of Labor phrases it, is the second great demand of the trade-unions. It is a very reasonable demand. Trade-union writers are apt to use contradictory arguments in their advocacy of this reform, but an economist like Mr. John Rae convincingly shows that the case for an eight-hour day with ten hours' pay is well made out from experience.[1] Mr. Rae has so thoroughly discussed this subject that I can do no better than to borrow from him a few pertinent facts and comments. He begins by pointing out that the working day was commonly about eight hours in length in England before the rise of the factory system. King Alfred's rule prevailed with early Englishmen so far as work was concerned.

The introduction into mines and factories of machinery run by steam lengthened the moderate hours of the miner's and the farmer's day to a working day of twelve, fourteen, or even sixteen hours in the cot-

[1] *Eight Hours for Work*, 1894. Mr. Rae's volume is so candid, comprehensive, and exhaustive of the subject that it is the one authority to refer to. *A Shorter Working Day*, by R. Hadfield and H. de B. Gibbins, and *The Eight Hour Day*, by Sidney Webb and Harold Cox (1891), are much inferior statements in favor of the movement, and Mr. J. M. Robertson's *The Eight Hours Question*, in opposition, is an inadequate treatment. So liberal-minded an economist as General F. A. Walker would probably, in view of the numerous facts brought forward by Mr. Rae to show the successful operation of the system, have modified his attitude, as evidenced in his article on "The Eight Hour Agitation" (reprinted in his *Discussions of Economics and Statistics*, vol. ii. pp. 379–396) in the *Atlantic Monthly* for June, 1890. Commissioner Wright gives a good brief account of the movement in his *Industrial Evolution of the United States*, part iii.

ton factory. In their eagerness to get the utmost product from their expensive machinery, the manufacturers overlooked the importance of the living machines that they employed. After a certain limit is reached, it is better for the workmen, and better for the employer, that the spinner or weaver shall rest. The last hour has too often "eaten up all the profits." Richard Cobden, to be sure, thought that the passage of the ten-hour bill for women and children in 1847 would close down every factory in England; but no such result followed. On the contrary, the reduction of hours increased the product and greatly heightened the efficiency of the workman. Other experiences in reducing working hours in mills to ten a day have taught the same lesson. What Robert Owen attained at New Lanark, Swiss, Dutch, and Massachusetts manufacturers have also attained by a ten-hours rule, — a larger profit to themselves, and an improved physical and moral condition for their workpeople. The ten-hour day has amply vindicated itself wherever it has been tried.[1]

The question of a further reduction to eight hours is one to be decided in the same manner, by experience. The actual demand is for the wage now paid for ten hours' work, to be done in eight hours' time. The practical inquiry, — the only one of much importance, — is, Can this be done? If the average workman of this generation is put on the eight-hour day, with ten hours' wages, will he speed himself up, or can he be speeded up, so that he will produce as much in

[1] See the excellent paper by Mr. A. F. Weber in the *Report of the Industrial Conference of 1902*, pp. 189–202, and the addresses by Mr. Theodore Marburg and Mr. M. M. Marks in the same volume.

eight hours as formerly in ten, without undue strain? The numerous cases in which Mr. Rae gives the results of such a reduction prove that this has been done repeatedly, and the probability therefore is that it can be done commonly. All that the vast majority of workmen now accomplish in ten hours, they could accomplish in eight hours, *if it were made worth their while.* The eight-hour worker "hauls in slack" very plainly. He works more rapidly, more accurately, and more independently than the ten-hour worker. He stops his machine less often and for shorter times, so that even "automatic machinery" turns out a larger product per hour when tended by an alert and interested eight-hour worker. No argument is apparently so conclusive as the manufacturer's declaration that an hour's stoppage of his machinery means and must mean a proportional loss of production and so of profit. But no argument has been proved by actual trial to be more deceptive! The man at the machine is far more important than the machine, and the main point is to find how long he can be kept at his maximum efficiency, so that to work him longer becomes unprofitable. Mr. Rae has demonstrated that eight hours is the most profitable length of the working-day for all parties concerned, in many occupations (pp. 93–95). It has become the duty, then, of every employer who is awake to his own interests to test the truth of this position by a fair and careful trial of a shorter working-day in his own factory.

The one condition on which the eight-hour day with a ten-hour wage should be introduced is that the former ten-hours' product shall be maintained. The product must be kept up, since it is the source from

which the wages are to be paid. If production decreases with the eight-hour day, then wages must fall as well as profits. The argument for a shorter day is successful when appeal is taken to the facts to find what actual trial has brought about. There have been proved, again and again, to be "reserves of personal efficiency" in the ordinary worker of this age upon which an eight-hour system may securely draw. The modern workingman — quick, nervous, and intelligent — does his best in very many industries by working eight hours only, and giving the remainder of the twenty-four to rest and recreation, to the pleasures of family life and the improvement of his mind. Then he is not overworked; then he is not underworked; then he is doing his proper task, and what is usually now paid to him for ten hours' work he can and will earn in eight hours.

This is the firm ground on which to base the demand for the shorter day. But many trade-unionists and others leave this solid basis, and prefer to construct a palace in cloudland by claiming that a reduction of hours by one fifth would increase the number of workers needed one fifth, and thus solve the problem of "the unemployed," who would be drawn in to do the work. Mr. George Gunton believes that the "direct and immediate effect" of the general adoption of the eight-hour system in the manual trades of the United States would be to create employment for 3,552,059 more adult laborers.[1] This is an effort to extract sunshine from cucumbers. As Mr. Rae shows, the reasoning "is entirely illusory. It stands in absolute contradiction to our now very abundant experience of the real effects

[1] *Wealth and Progress*, pp. 253 f.

of shortening the hours of labor, and it stands in absolute contradiction to the natural operation of economic forces to which it professes to appeal. . . . An eight-hour day . . . cannot make any serious impression on the number of the unemployed. . . . The most popular and trusted argument in favor of the eight-hour day constitutes really its only serious practical danger," *i. e.*, in the way of its adoption.[1]

An eight-hour day being a reasonable demand, the trade-unions asking for it should have the support of public opinion. Their best way to obtain it is probably by insisting upon incorporating it into the agreements which they make with employers. A general law fixing eight hours as the limit of a day's work for all occupations would plainly be very inexpedient, owing to the diversity of these occupations.[2] Trade option laws, giving the men in a particular trade the option to apply or to reject a general law, would also be inferior in efficacy to voluntary agreements, although the progress of the reform would be apparently slower when thus left to unions and employers to adjust.

It is another matter for the State to make eight hours the legal limit on all public works, and thus set an example as an employer of labor. The District of Columbia and these States of the Union have such laws on their statute books: Arkansas, California, Colorado, Connecticut, Idaho, Illinois, Indiana, Kansas, Massachusetts, Minnesota, Missouri, Montana, Nebraska, New Jersey, New Mexico, New York, Ohio, Pennsylvania, Tennessee, Utah, Washington, West

[1] *Eight Hours for Work*, pp. 180–216.

[2] Mr. Rae points out also that two million persons are returned in Great Britain as working on their own account, and they should be free to regulate their own hours.

Virginia, Wisconsin, and Wyoming. In California, Connecticut, Illinois, Indiana, Missouri, Nebraska, New York, Pennsylvania, and Wisconsin eight hours constitute a legal day's work for all workers, unless specified otherwise by contract between employer and employee. These laws do not apply to agricultural work. In Massachusetts, the governor of the State has recently vetoed an eight-hour law as unconstitutional, and the fortunes of such laws have been very "mixed" in numerous other States. But the United States Supreme Court, in December, 1903, upheld the constitutionality of the Kansas law, which prohibits contractors for public work, State, county, or municipal, from requiring the laborers thereon to work more than eight hours a day. Six of the nine judges declared that no one has a natural right to be employed on State work; that the State may have its work done as it sees fit; and that the State, having created municipal organizations, can order them to follow the same restrictions as are observed by the State. The wisdom of such restrictions is a matter to be determined by the legislature. The highest court of appeal in New York State has taken the same position. The Supreme Court of the United States had previously sanctioned as constitutional a statute of Utah applying the eight-hour rule to private mining companies. But no State has yet passed an eight-hour law binding upon private employers in general.

The trade-unionist's mistake in regard to the effect of an eight-hour day on the unemployed appears again in the weakest point of all his logic. Whenever he advocates measures which would actually decrease the output, he is cutting the ground from beneath his own

feet, as he is decreasing the amount from which wages are to come. On no point of criticism of trade-union policy is there a more general agreement among the friends and the opponents of trade-unionism *per se* than upon this judgment that the trade-unions as a body, in England and America, deliberately endeavor, by various rules as to the work to be performed by their members, to diminish the amount which would otherwise be performed. J. E. Cairnes, in his unsympathetic treatment of trade-unionism,[1] quoted from W. T. Thornton, "On Labour," numerous examples of rules intended to have the effect of "making work" among brick-layers, masons, plasterers, and others; these have become familiar to readers of economic literature by frequent repetition since. Thornton, of course, did not approve these absurd rules, — that no man, for instance, shall carry more than eight or ten or twelve bricks at a time, as the case may be; but Cairnes criticised him as holding a position which would justify such action, *i. e.*, that the quantity of labor to be done at any time is a fixed amount, and therefore the more one workingman does, the less there is, or will be, for others to do. Unionists think it wrong, therefore, for "one man to do the work of two," as this is "taking away the work of another man."

No recent writer has more neatly exposed this "lump-of-labor fallacy" than Mr. D. F. Schloss, in his valuable work on "Methods of Industrial Remuneration" (pp. 80–86, third edition). It is a fallacy which cannot be too soon driven out from trade-union logic. As Mr. C. M. Schwab said to the New York

[1] *Some Leading Principles of Political Economy Newly Expounded*, part ii. chs. iii., iv.

Conference on Industrial Conciliation in 1901: "Labor unions will never succeed, as trusts never succeeded, that attempt to restrict the output, or that attempt to put any restriction upon trade in general. These trusts that are formed in a business way to control the output of any commodity, to raise its price, all have failed, and all will fail. A trust will succeed where there are motives of consolidation for economy's sake, and for regulating trade generally. And the laborer must take a similar position. Labor must not restrict the output. That is a fundamental principle. And I am sorry to say that every labor organization with which I have had experience in the past has had as its foundation the restriction of the output. It is that principle which is putting English commerce and English trade in the bad position in which they are to-day."[1] So the English writer, Mr. W. R. Lawson, while discounting patriotic American views of the superiority of the American workman to the English, declares that after English unionists have abandoned "their suicidal antipathy to machines . . . several of their other fallacies will have to follow. 'Making the work go round' will become an obsolete doctrine. Restricting output will in its turn have to give way. The 'ca' canny' system altogether will have to go."[2]

It is common for trade-unionists and their advocates to deny the existence of a desire to limit the output on the part of the unions, but the fairest exponents of the system of organizations of the workingmen see that

[1] *Industrial Conciliation*, p. 33. See part ii. of *La Crise du Trade-Unionisme*, by P. Mantoux and M. Alfossa, and Mr. A. Maurice Low's paper on "Labor Unions and British Industry" in the *Bulletin of the Bureau of Labor*, No. 50, January, 1904.

[2] *American Industrial Problems*, p. 87.

"there has always been a strong tendency among labor organizations to discourage exertion beyond a certain limit. The tendency does not always express itself in formal rules. On the contrary, it appears chiefly in the silent, or at least informal, pressure of working-class opinion. It is occasionally embodied in rules which distinctly forbid the accomplishment of more than a fixed amount of work in a given time; but such regulations are always felt by employers, and almost always by other persons who are not of the wage-working class, to be obviously unjust, short-sighted, and socially injurious."[1] Collective bargaining, of course, demands that piece-work rates shall be so determined that the average workman shall be able to make a fair day's wage, but if the "chaser," or "hustler," is to be set aside in fixing the "fair day's work" in justice to the workman, the idler and the incompetent must be set aside in justice to the employer. In Chicago, master plumbers asserted in 1900 that some of the detailed rules of the unions made it an offence for a man to do more than what actually amounted to a third of a good day's work. "Any member guilty of excessive work or rushing on any job shall be reported," said the rules of the Chicago carpenters, "and shall be subject to a fine of $5.00."

Despite all the minor arguments brought forward in defence of rules restricting the output, it remains true that the unions had best abolish all such regulations and look rather to the shorter day for the protection of the workman against undue strain.

Trade-unions were formerly the subject of much

[1] Dr. E. Dana Durand, in the *Report of the Industrial Commission*, vol. xvii. p. lviii.

criticism because of their rules regulating the number of apprentices to be employed in an establishment. The purpose of these regulations was to prevent the over-crowding of the trade and the consequent reduction of wages. The cordwainers of New York city, for instance, who struck in 1809, had a rule that no master cordwainer should employ more than two apprentices.[1] In England, to-day, "the great printing office of the 'Manchester Guardian,' employing over a hundred compositors, is allowed to take no more apprentices than the jobbing master with a dozen men."[2] Such rules as these soon defeat the purpose of their makers, as the business cannot be carried on with so few recruits. The usual practice is for the unions to agree to so many apprentices to a certain number of journeymen. The English boiler makers thus allow two apprentices to seven journeymen; the felt hat makers and the flint glass cutters, one to five; the flint glass makers, one to six; the Nottingham lace makers, one to seven; the Yorkshire stuff pressers and the pearl button makers, one to ten.

The boiler makers outnumber all the other English unions in which there is any effective regulation of the number of apprentices. The custom of patrimony (allowing a journeyman father to make an apprentice of his son) has practically nullified restrictive rules as to the number of apprentices in numerous trades. The whole system of apprenticeship has been so disintegrated in modern times that the rules of the unions are actually of little importance, whatever may be the

[1] *The Acquisition of Political, Social, and Industrial Rights of Man in America*, by John Bach McMaster, p. 59.

[2] *Industrial Democracy*, p. 466.

desire of unionists to control the market for labor in this way. Mr. and Mrs. Webb estimate that out of a total trade-union membership of 1,490,000 in 1902, a membership of only 15,000 was in unions which actually enforced apprenticeship regulations.[1] The compositors and the cotton-spinners are two especially interesting trades in which no such rules appear.

It is needless to dwell upon the theory of trade-unionism in this direction, as the question of apprentices lacks actuality. No sufficient substitute for the old apprentice system has yet been found, but it is not likely that the system will be generally revived, as it has little support to-day from workingmen or employers.

A very important matter upon which American trade-unionists properly lay stress in their list of reforms needed to improve the lot of the workingman, is the liability of the employer in case of accident happening to the employee. The common-law doctrine which made the employer liable to the injured employee only in case the latter could actually prove negligence on the part of the employer has become antiquated through the revolution in industrial conditions. The "fellow-servant" doctrine, according to which a workman has to bear all the risks of incompetence or negligence on the part of any or all of his many co-workers, is plainly inequitable. The principles of the English Workmen's Compensation Act of 1867 should be incorporated into American law as soon as possible, and the efforts of the trade-unions in this direction deserve the heartiest support. The fellow-servant doctrine should be completely cast out,

[1] *Industrial Democracy*, p. 474, *n.*

and the employer be required to compensate his workmen injured in any way except through their own gross carelessness. "The burdens entailed by industrial accidents should be made to constitute a normal item in the cost of operation or production, and therefore to be borne by the employers," as Mr. Willoughby declares in his authoritative volume, "Workingmen's Insurance." The scale of indemnity should be set forth in the law, in order to avoid the burden of litigation over the amount of compensation to be awarded. A reform in the laws concerning the liability of employers is a supreme need in America. "It would be difficult to think of another field of social or legal reform in which the United States is so far behind other nations." [1]

The trade-unions seek a monopoly of the supply of labor in order that they may control the situation and push up wages to the highest possible point. The policy of intimidation of non-unionists has no other reason than this. But the plan is a mistaken one, if unionists hope or expect to enlist practically all laborers, skilled and unskilled, under the union banners. The number of these laborers is far too great, and the difficulties in the way of holding them, if once they could be got together, would be insuperable. The organization of unskilled workingmen for any length of time is a task to which English trade-unionism has repeatedly shown itself inadequate, and the attempt has not even been made in this country. Out of the vast mass of unskilled laborers men are rising by thousands every year into the number of the skilled workers, and many of these men are most refractory material for unionism.

[1] W. F. Willoughby, *Workingmen's Insurance*, p. 329.

If we dismiss from consideration all the unskilled, the skilled laborers are still a host quite unmanageable by any autocrat or by any committee that the laboring world has yet known. It is a steadily dissolving and steadily reintegrating host. Granting all that may be correctly said about the lessening of opportunity to-day for the workingman to rise in the world, the opportunity left by modern large-scale production is still large enough to draw off the men who would otherwise be the leaders of unionism, and to make a close organization of the laboring population under the lead of its real aristocracy impossible. With all respect to the actual leaders of trade-unionism, it is plain that few of them are the equals in ability of the laboring men who have risen to be great employers, or the assistants of great employers. Trade-unionism can offer no such field for exceptional talent as the world without affords. Trade-unionists, in all probability, will remain, then, a large but very changeable body, having a precarious hold, on the lower level, of a few of the unskilled workers, and constantly losing, on the upper level, its strongest men to the powers of capitalism.

No policy of intimidation will succeed, in a free country, in bringing all non-unionists over. Trade-unionism will have to content itself with being a virtual monopoly in some small trades, and with holding a powerful position in numerous other occupations. But to make great advances it is not necessary that all the workers in a trade shall be unionists. If unionism numbers an active majority of the carpenters or the engineers, it can achieve well-nigh all that would be possible for the whole body of workmen in either

of these occupations. As they are not likely ever to convert the whole body in the large trades, the unions should be content to raise the quality of the membership they have, and to make themselves indispensable through ability and character, rather than formidable through simple mass.

The "recognition of the union" is a not infrequent cause of strikes.[1] This is a term with which the unionist is too apt to palter in a double sense. If "recognition" means what it does elsewhere, then the employer who is ready to conduct negotiations and make agreements with a union recognizes it. Such recognition, as we have repeatedly had occasion to remark, is conceded to-day by enlightened employers. But this recognition does not necessarily mean that only unionists may be employed by such an employer. This is quite a different matter. It is not a "recognition" of the union, but a submission to it, implying a non-recognition, an exclusion in fact, of all non-unionists. This attempt to make the employer an active ally of the union is a virtual confession by the unionist that he has not perseverance enough to convert the non-unionist, and therefore wishes the employer to fight his battles for him.

The "open shop," on the contrary, is the fighting line for the employer to take. He will have behind him public opinion, which believes that non-unionists have rights which unionists must be obliged to respect.

[1] *The Report of the Anthracite Coal Strike Commission*, says (p. 31): "The occasion of the strike of 1902 was the demand of the United Mine Workers of America for an increase in wages, a decrease in time, and the payment for coal by weight wherever practicable and where then paid by the car. The cause lies deeper than the occasion, and is to be found in the desire for the recognition by the operators of the miners' union."

The vigorous words of the Anthracite Strike Commission on this subject cannot be improved upon. They have commanded the substantial assent of the whole American people: "The right to remain at work where others have ceased to work, or to engage anew in work which others have abandoned, is part of the personal liberty of a citizen that can never be surrendered, and every infringement thereof merits, and should receive, the stern denouncement of the law. All government implies restraint, and it is not less, but more, necessary in self-governed communities, than in others, to compel restraint of the passions of men which make for disorder and lawlessness. Our language is the language of a free people, and fails to furnish any form of speech by which the right of a citizen to work when he pleases, for whom he pleases, and on what terms he pleases, can be successfully denied. The common sense of our people, as well as the common law, forbids that this right should be assailed with impunity. It is vain to say that the man who remains at work while others cease to work, or takes the place of one who has abandoned his work, helps to defeat the aspirations of men who seek to obtain better recompense for their labor, and better conditions of life. Approval of the object of a strike, or persuasion that its purpose is high and noble, cannot sanction an attempt to destroy the right of others to a different opinion in this respect, or to interfere with their conduct in choosing to work upon what terms and at what time and for whom it may please them so to do.

"The right thus to work cannot be made to depend upon the approval or disapproval of the personal character and conduct of those who claim to exercise

this right. If this were otherwise, then those who remain at work might, if they were in the majority, have both the right and the power to prevent others, who choose to cease work, from so doing.

"This all seems too plain for argument. Common sense and common law alike denounce the conduct of those who interfere with this fundamental right of the citizen. The assertion of the right seems trite and commonplace, but that land is blessed where the maxims of liberty are commonplaces." (Report, p. 75.)

A minor weapon of the unions is the "union label," a device of some sort affixed to a manufactured article, indicating that it was made by "union labor." Many persons believe that it is the most powerful weapon of organized labor, but special investigation of the workings of the label does not seem to the judicious to promise for it a brilliant future.[1] The families of unionists do not appear to buy these labelled goods, as a rule; they get better bargains in buying non-label goods. "The label clothing in greatest demand was workingmen's overalls. In some cases purchase of these was compulsory by reason of the one-dollar fine imposed by the union for wearing so-called 'scab' overalls." The details impartially reported by Mr. Boyle indicate a losing cause. Even a prominent labor leader in the city declared, "The label is a mistake; it is contrary to human nature. . . . We hope nothing from the label."[2] Without the boycott, now generally pro-

[1] See, for instance, a thorough study of the Union Label in Milwaukee, where there is a great "political demand for union label goods," in the *American Journal of Sociology* for September, 1903, by Mr. James E. Boyle.

[2] The monstrosity of a "union label funeral" has recently appeared in Chicago.

nounced illegal throughout the country, the label, says Mr. Boyle truly, "loses at once a large part of its power, for it has more success in boycotting an 'unfair' merchant than in building up a 'fair' one." The abolition of child labor is the ground on which the label makes its strongest appeal, but there are better ways for abolishing child labor than such a mistaken policy of influencing the consumer.

CHAPTER VIII

INDUSTRIAL WAR

I. STRIKES AND LOCKOUTS

MODERN workmen, as we have seen, have their ideals. In order to realize these ideals they combine and make specific demands on their employers, in regard to wages and hours and conditions of work. If these demands, in a particular case, are granted at once, the *status quo* continues; that is to say, industrial peace persists. A new bargain is made, and there is no rupture of the relations of the employer and the employee. But most bargains, whether for services or for commodities, are not made at once. In the majority of cases there is some hitch and some delay. How, then, shall the inevitable differences between the employer and the employee be adjusted? The most obvious course for the determined worker or employer is to insist on his own demand. In taking this stand the trade-unions, as a rule, use two weapons (to employ terms of war) and the employer two. The strike and the boycott on one side correspond to the lockout and the blacklist on the other.

Let us first consider the workman's natural weapon, the strike. The strike is a concerted refusal of a body of workmen to work longer for a particular employer until some demand made by them has been granted by him, or some demand made by him and objectionable to them is withdrawn or modified. As a result of this refusal, the men go out "on strike." They stop

their machines, put down their tools, and leave the establishment; and they stay out while "on strike," without making any immediate attempt to procure work elsewhere. This situation continues with various more or less peaceful episodes of picketing and intimidation, and endeavors to affect public opinion favorably, until the dispute has been adjusted in some way and the strikers return to work in the establishment. If it is not adjusted, they find work elsewhere, and the employer fills their places in time. Evidently, if the men are banded together in a trade-union, they stand a much better chance to win than if they were acting purely as individuals.

Strikes are not always the work of trade-unionists. They may take place as the result of a wave of feeling passing through a body of workmen, even if not one of them is connected with a trade-union. If the men are not organized, however, the prospect of their succeeding is not brilliant,[1] — no such prospect as they would have if organized into a strong trade-union, with a long history and a full treasury behind it. The union usually has funds which have gradually accumulated from fees and other dues from the members. Out of these funds an allowance is given to each striker while the strike continues, the so-called "strike money." If the strike is prolonged, other unions may come to the aid of the striking union, with funds out of their treasuries. Thus, the fuller the treasuries, the longer the strike will probably last. The employer may become discouraged after a time and seek to make terms.

[1] See, for an instance of success under such conditions, Mr. J. R. Buchanan's *Story of a Labor Agitator*, ch. iii., on the strike in the shops of the Missouri Pacific Railway in 1872.

Non-unionists on strike have no compact local organization to encourage them, and no fellow-feeling with the members of a national union and with other trade associations inclined to come to their assistance. They have probably but limited savings to fall back upon, and when these are exhausted, they must appeal to their friends and the public, whose sympathy is uncertain. Voluntary contributions in behalf of the ordinary strike are a very precarious resource.[1]

The longer the strike continues, supported by large funds, the greater is the probability that the employer will wish to compromise. He has learned to appreciate the strength of the strikers, and if they can apparently hold out for months to come, without seeing the bottom of their treasury, he will be concerned over the steady losses which he is incurring. Nobody insures the ordinary employer against these. As a rule he is not a member of an association of employers, with large insurance funds against strikes.

The history of strikes is long and diversified. Some writers on labor movements tell us that the first strike was that recorded in Exodus i. 14, where it is stated that the Egyptians made the life of the children of Israel "bitter with hard bondage, in mortar, and in brick, and in all manner of service in the field," and that Pharaoh (v. 6–8) "commanded the same day the task-masters of the people, and their officers, saying, Ye shall no more give the people straw to make brick, as heretofore ; let them go and gather straw for themselves. And the tale of the bricks, which they

[1] The experience of the organized dock-strikers of London in 1889 was very unusual. The £30,000 which was sent to them from far-off Australia saved the day.

did make heretofore, ye shall lay upon them ; ye shall not diminish aught thereof." The Israelites, however, were not hired laborers, but a subject people, and their subsequent departure from Egypt was not a strike but a servile insurrection.[1] The chief resemblance of this to a modern strike would seem to be the profound conviction felt in both cases that Jehovah is on the side of revolt!

The objects of strikes are many and various, but the great majority of them come under a few heads. The strike may be ordered to secure an advance in wages, and generally this is done in good times, when conditions are favorable to the strikers. It may be ordered to resist a reduction of wages proposed by the employer in hard times, when conditions seem to him to demand such a change ; or to shorten the working day, or to resist an increase in the length of it demanded by the employer. A strike may be ordered to bring about a change in some method of the work, — for instance, the substitution of piece-work for day-work, or some change in the materials used. The occasion may be a dispute about the number of apprentices to be employed in the factory, or some such detail of the industry. When a strike occurs after a union man has been discharged because of his unionism, it is an assertion of the right of the men to combine freely. Trade-unionists often strike because asked to work side by side with non-unionists. This, of course, is not a denial by the employers of the right of workmen to combine.

[1] Mr. and Mrs. Webb give a modern parallel in their reference to a strike of cotton spinners in Staleybridge, in 1892, because of a supply of bad material for their work. Mr. C. Osborn Ward, in his two volumes on *The Ancient Lowly*, repeatedly commits the error rejected in the text.

Workpeople may strike in order to assist striking employees outside their own factory, in the same or some other industry, in the same locality or elsewhere, when they have no grievance against their own employer. This is the so-called sympathetic strike. It is a very practical endorsement by workmen of an outside strike. The method naturally receives much approval from workingmen in general; just as naturally it receives the smallest amount of sympathy from the public. In some cases the general public may suffer much in consequence, without seeing any good reason why workmen should strike against an employer with whom they have no fault to find, as they say themselves.

The sympathetic strike is at least an impressive way of showing an actual union of feeling of certain workmen with their fellow-workmen throughout the trade, or in other trades. The idea is that all the workers should hold together; that they are enlisted in a common cause, and that they ought to march with even step and unbroken front wherever their comrades choose to lead. There is certainly an heroic aspect to the situation, when the sympathetic strike involves loss and suffering for the sympathetic striker. If, in weighing these matters, one takes the warlike strain that many people fall into when discussing labor questions, he may approve the sympathetic strike because it helps the original strikers to maintain their cause, and thus strengthens "the army of labor." Although but a small part of the public may endorse the method, it may pave the way for a successful outcome of future labor troubles in which the sympathizers themselves are involved. The sympathetic strike is usually dis-

couraged, however, by leaders of the labor movement. It is now generally felt by the wiser workmen that they can do more to help the strikers by keeping at work than by striking: for they will thus be able to send contributions in aid of the strike from the treasury of their union.[1]

The strike is usually spoken of as a thing distinct from the lockout. In a lockout the employer shuts his works down and shuts his workmen out, because they will not agree to some proposal which he makes. A strike is supposed to begin with the employee. But if we attempt to distinguish sharply between disputes in which the employer takes the initiative and those in which the workmen take it, we often find it practically impossible to make the distinction with any degree of accuracy. For instance, the employer comes to a dull season, when the demand for his goods is not active, and he anticipates bad markets for some time. Naturally he will wish to take advantage of this slackness in demand to close down the works for repairs, with the intention of reopening when times decidedly improve. To bring this about, he makes some demand on his workpeople which he feels sure they will refuse to comply with. They do refuse, and go out. This dispute would be set down as a strike by some authorities, but not by others. In fact, the employer is responsible, and it is essentially, although not formally, a lockout. The men, again, may strike because they believe

[1] It should be noted that a general lockout declared by an association of employers, in order, among other purposes, to cut off such contributions, is of the same nature as a sympathetic strike. Theoretically, at least, it can be justified only if one is prepared to justify the principle of the sympathetic strike. See *Sympathetic Strikes and Sympathetic Lockouts*, by F. S. Hall, 1898.

that the employer is going to lower wages, and they think it good strategy to anticipate him and make the first move.[1] In such a case, had they worked for a short time longer, the trouble would have been set down as a lockout. When they strike the employer is pleased, and improves the opportunity to close his factory for an indefinite time.

It is comparatively unimportant to distinguish between strikes and lockouts, as the number of lockouts reported is only about one-twentieth of the number of strikes taking place, according to the statistics of the last twenty years in most modern countries. If, then, we add to the number of strikes the number of lockouts, and use for the combined figures the term "labor disputes," or "labor difficulties," the results at which we arrive will not materially differ from those reached on the basis of strikes proper, as reported. Many authorities, therefore, now place strikes and lockouts together under one head. We find them thus set down, for instance, in the reports of the English Board of Trade since 1893.

The legal right of the employer to order a lockout and shut down his works is perfectly clear. According to modern ideas, he is not responsible to a law-making authority or to a court for the general conduct of his private business, — least of all, for opening or closing such business. If he considers it to his advantage to shut down his works, after reasonable notice to that effect, and throw hundreds of workmen out of employment, it is supposed to be his own affair. His

[1] A notable instance in point is the great strike of the Amalgamated Association of Iron, Steel, and Tin Workers against the United States Steel Corporation in 1901.

legal right to close his works, even without previous notice, is certainly just as plain as the right of the men to strike without notice.

The question of the moral rights of either party is quite a different matter. Before the employer shuts down his factory, he ought to consider what will be the probable lot of the workers whom he shuts out for a longer or a shorter time. It is much to the credit of many employers in commercial crises that they often run their factories at a loss, mainly because they wish to keep their men in work and thus prevent much hardship and suffering. Of course the employer hopes to recover later the loss which he has thus undergone, but this may require a long time. On the other hand, while workmen have usually a full legal right to strike at any time, they ought to consider, and in many cases they probably do consider, whether their employer has treated them generously in times past, and especially whether he has recovered from such losses as have just been mentioned.

A threat to strike and the actual strike should be carefully distinguished. A threat to strike, especially one that does not name a time for the strike to begin, may easily be withdrawn in case of resistance. It may be followed by negotiations leading to a conciliation or arbitration of the difficulty. Production generally goes on until the strike threatened becomes an actual fact. The strike is an open rupture of the previous peaceful relations. When the men finally go out, it is a declaration of industrial war; and, although an armed truce may follow in most cases, the later proceedings of both parties too often remind us of war in the tented field. Martial law — that is, the sus-

pension of ordinary law — is sometimes declared of necessity by the civil authorities, and actual war in the full sense of the word ensues, as at Homestead in 1892. The State militia, or the regular troops of the United States, or both, are brought upon the scene; cannon are mounted; volleys are fired and returned; numbers of men are killed on both sides; weeks or months of bitter warfare follow; and at last the strikers, defeated but not convinced, return to their homes, if not to their former work.

It is, of course, the interference of the strikers with the business which they have voluntarily left that leads to this warfare. The employer does not follow up men who have left his employ, to interfere violently with their procuring work elsewhere. The worst thing that is alleged against the employer by trade-unionists is his use of the "blacklist," so-called, but this is not a measure implying force. On the other hand, the strikers are not of a mind to sit down quietly in their homes and let the places which they have abandoned be filled by other men, unionists or non-unionists. However peacefully inclined they may be at first, they are apt to decide soon to use more or less intimidation, or violence, in order to keep other workmen away. Violence is quite certain to occur when a long strike shows plain signs of breaking down, and the strikers' places are gradually being filled by "strike-breakers," so-called.

The logic of the action of the strikers in interfering with the business of their late employer is by no means flawless. They have declared that they will not continue to work for him unless, let us say, wages are raised ten per cent. The employer refuses to do this,

as he has a right to do. It would then seem very plain to a third party that they have practically discharged themselves. Having done this, it would also seem the only reasonable course for them to leave the employer alone, to quit the factory and its neighborhood, and to go elsewhere in search of work.[1]

In a lockout the employer discharges his workmen from being his employees. In a strike the workmen discharge him from being their employer. They have asserted that they will stop work unless he does certain things which he considers very undesirable, if not actually impossible, and he so replies. But the strikers obviously feel that they still have some rights in the factory. They believe, and their belief finds general indorsement by the public, that they are still, in some sense, a part of the establishment. The law would not, of course, enforce any such claim, made tacitly or openly. The striking workingman had a right, while he remained at work, to demand the established wages for such work faithfully performed; he was fulfilling his part of an implied or written agreement. Having refused to work any longer on the terms upon which he entered the business, he is no longer a party to any such agreement, and has no rights under it. His proposals for a new agreement having been rejected by the proprietor of the establishment, what is left for him in reason but to leave and find work elsewhere, wherever he can, and at whatever wages he chooses to accept? He should no longer trouble his former employer, who has ceased to be his employer by the

[1] Mr. P. M. Arthur, the late chief of the Brotherhood of Locomotive Engineers, often declared that, in case of a strike, the strikers should go at once to their homes and remain there quietly until the strike is settled.

striker's own act. He is no longer technically or legally an employee of the factory from which he has struck, and he should so conduct himself. He should not claim the advantages of two contradictory positions, — that he is an employee still, and that he is subject to the union only.

But such considerations as these, however practical, disregard important facts. This virtual claim of the workingman is not to be so easily rejected. There are social aspects of the matter which may not be put aside, however little they may be set down in statute law. The striking workmen in a particular case have been a well-directed industrial organization for a number of years, — let us say, some of them for five years, some for ten, some possibly for twenty years. (In the Riverside Press, where this book is printed, there have even been times when representatives of three generations of the same family were employed in the business at once.) They have been working long years for their employer. They much prefer to continue, and he much prefers to have them continue, in this relation, if certain conditions can be satisfactorily adjusted. Now it is one side that wants a change, now the other. If the changes are not such as to interfere essentially with the conduct of the industry, it may be far the best way to agree to them, at least for a time of trial. The employer is always bound, as a reasonable man, to remember that these workmen, when they have made a claim which he has rejected, and have gone out on a strike to support it, do not sustain the same moral relation to him as if they had worked for him only casually. Their position is certainly not the same as that of other laborers who may at once come in to

take their places. A moral partnership is practically involved in every wage contract. This is an association *sui generis*, as M. E. Chevallier calls it. It becomes more exigent as time goes on, and it is not one to be lightly disregarded.[1]

The striking workmen, again, as a rule, prefer to return to the establishment that they have left, if their terms are accepted, rather than take employment elsewhere on the same terms. They have taken a stand in which they actually wish and expect further negotiations as to terms of agreement. Neither party, at the beginning of a labor dispute, issues a real ultimatum, whatever it may say. While declaring, perhaps, that only one solution will be accepted by it, — *i. e.*, its own terms, — it really is holding the matter open for other possible solutions. It is this fact which explains its attitude and that of the sympathetic public. The wise employer usually prefers to have strikers return, even if the strike has been long and violent. He has numerous good reasons for this feeling. For one thing, it would be a continuous loss to him to take on new workmen until they became as proficient as the men whom he has lost by the strike. In the great majority of strikes the question is commonly a matter of minor terms and conditions; it is not a matter of the life or the death of the business. There is a fair chance of adjustment if both parties become more reasonable, and the parties are wise to continue the *status quo* until all possibility of a settlement has disappeared.

The men are still the employer's workmen in some moral sense; they still refer to the shop as their shop and to him as their employer, and he is likely to speak

[1] See *A Dividend to Labor*, chaps. i. ii. xi.

of them as his workmen, both parties implying that there is yet a tie of some kind between them. This being the case, — the employer really desiring them to come back to work and they actually wishing to return, — they usually do return on the concession of certain points. Striking workmen have some moral rights, if not technical or legal rights, in their general position toward their recent employer. The "cash nexus" is not the only one. When that has been broken, and wages are no longer paid and received, there is still a bond of some sort; so they feel, and society substantially agrees with them. Modern industry has little use for the employer who says that under no circumstances shall a workman receive employment again in his factory, because he has once joined in a strike, — a thing he had a perfect right to do. It has little use for the workman who says that under no conditions will he work again for an employer who fails in a certain dispute to do what the workman thinks his whole duty.

The statistics of strikes have been taken most fully in the United States, in recent years, through the efforts of the Commissioner of Labor. In 1888 the third Annual Report of the Commissioner was published, which dealt with strikes and lockouts from January 1, 1881, to December 31, 1886. In 1894 the Commissioner issued his tenth Annual Report on the same subject, the time covered being January 1, 1887–June 30, 1894; and in 1901 his sixteenth Report, which brings the figures of strikes and lockouts down to December 31, 1900. We have thus an enumeration of the labor disputes which have taken place in the United States during these twenty years, 1881–1900,

inclusive. The three following tables, from the last-mentioned report, give the number and duration of such disputes for this period.

STRIKES, BY YEARS, JANUARY 1, 1881, TO DECEMBER 31, 1900.

Year.	Strikes.		Establishments.		Average establishments to a strike.	Employees thrown out of employment.	
	Number.	Per cent of total.	Number.	Per cent. of total.		Number.	Per cent. of total.
1881	471	2.07	2,928	2.49	6.2	129,521	2.12
1882	454	1.99	2,105	1.79	4.6	154,671	2.53
1883	478	2.10	2,759	2.35	5.8	149,763	2.45
1884	443	1.94	2,367	2.01	5.3	147,054	2.41
1885	645	2.83	2,284	1.94	3.5	242,705	3.97
1886	1,432	6.28	10,053	8.56	7.0	508,044	8.32
1887	1,436	6.30	6,589	5.61	4.6	379,676	6.22
1888	906	3.98	3,506	2.98	3.9	147,704	2.42
1889	1,075	4.72	3,786	3.22	3.5	249,559	4.09
1890	1,833	8.04	9,424	8.02	5.1	351,944	5.76
1891	1,717	7.53	8,116	6.91	4.7	298,939	4.90
1892	1,298	5.69	5,540	4.71	4.3	206,671	3.38
1893	1,305	5.73	4,555	3.88	3.5	265,914	4.36
1894	1,349	5.92	8,196	6.98	6.1	660,425	10.82
1895	1,215	5.33	6,973	5.93	5.7	392,403	6.43
1896	1,026	4.50	5,462	4.65	5.3	241,170	3.95
1897	1,078	4.73	8,492	7.23	7.9	408,391	6.69
1898	1,056	4.63	3,809	3.24	3.6	249,002[1]	4.08[1]
1899	1,797	7.88	11,317	9.63	6.3	417,072	6.83
1900	1,779	7.81	9,248	7.87	5.2	505,066	8.27
Total	22,793	100.00	117,509	100.00	5.2	6,105,694[1]	100.00[1]

LOCKOUTS, BY YEARS, JANUARY 1, 1881, TO DECEMBER 31, 1900.

Year.	Lockouts.		Establishments.		Average establishments to a lockout.	Employees thrown out of employment.	
	Number.	Per cent. of total.	Number.	Per cent. of total.		Number.	Per cent. of total.
1881	6	.60	9	.09	1.5	655	.13
1882	22	2.19	42	.42	1.9	4,131	.82
1883	28	2.79	117	1.18	4.2	20,512	4.07
1884	42	4.18	354	3.57	8.4	18,121	3.59
1885	50	4.97	183	1.84	3.7	15,424	3.06

[1] Not including the number in thirty-three establishments for which these data were not obtainable.

Year.	Lockouts.		Establishments.		Average establishments to a lockout.	Employees thrown out of employment.	
	Number.	Per cent. of total.	Number.	Per cent. of total.		Number.	Per cent. of total.
1886	140	13.93	1,509	15.19	10.8	101,980	20.22
1887	67	6.67	1,281	12.90	19.1	59,630	11.82
1888	40	3.98	180	1.81	4.5	15,176	3.01
1889	36	3.58	132	1.33	3.7	10,731	2.13
1890	64	6.37	324	3.26	5.1	21,555	4.28
1891	69	6.87	546	5.50	7.9	31,014	6.15
1892	61	6.07	716	7.21	11.7	32,014	6.35
1893	70	6.96	305	3.07	4.4	21,842	4.33
1894	55	5.47	875	8.81	15.9	29,619	5.87
1895	40	3.98	370	3.73	9.3	14,785	2.93
1896	40	3.98	51	.51	1.3	7,668	1.52
1897	32	3.18	171	1.72	5.3	7,763	1.54
1898	42	4.18	164	1.65	3.9	14,217	2.82
1899	41	4.08	323	3.25	7.9	14,817	2.94
1900	60	5.97	2,281	22.96	38.0	62,653	12.42
Total	1,005	100.00	9,933	100.00	9.9	504,307	100.00

DURATION OF STRIKES AND LOCKOUTS, JANUARY 1, 1881, TO DECEMBER 31, 1900.

Year.	Strikes.		Lockouts.	
	Establishments.	Average duration (days).	Establishments.	Average duration (days).
1881	2,928	12.8	9	32.2
1882	2,105	21.9	42	105.0
1883	2,759	20.6	117	57.5
1884	2,367	30.5	354	41.4
1885	2,284	30.1	183	27.1
1886	10,053	23.4	1,509	39.1
1887	6,589	20.9	1,281	49.8
1888	3,506	20.3	180	74.9
1889	3,786	26.2	132	57.5
1890	9,424	24.2	324	73.9
1891	8,116	34.9	546	37.8
1892	5,540	23.4	716	72.0
1893	4,555	20.6	305	34.7
1894	8,196	32.4	875	39.7
1895	6,973	20.5	370	32.3
1896	5,462	22.0	51	65.1
1897	8,492	27.4	171	38.6
1898	3,809	22.5	164	48.8
1899	11,317	15.2	323	37.5
1900	9,248	23.1	2,281	265.1
Total	117,509	23.8	9,933	97.1

In these twenty years, as the tables show, strikes in the United States numbered 22,793, affecting 117,509 establishments, and throwing out of work 6,105,694 employees (strikes lasting one day, or less than one day, were not reported). In the same period there were 1,005 lockouts, affecting 9,933 establishments, and throwing out of work 504,307 employees.

BOARD OF TRADE FIGURES FOR THE UNITED KINGDOM.

Year.	Number of disputes.	Number of workpeople affected.			Aggregate duration in working days.
		Directly.	Indirectly.	Total.	
1891	906	203,571	63,889	267,460	6,809,371
1892	700	316,136	40,663	356,799	17,381,936
1893	783	598,534	37,852	636,386	31,205,062
1894	929	257,314	67,934	325,248	9,529,010
1895	745	207,239	55,884	263,123	5,724,670
1896	926	147,950	50,240	198,190	3,746,368
1897	864	167,453	62,814	230,267	10,345,523
1898	711	200,769	53,138	253,907	15,289,478
1899	719	138,058	42,159	180,217	2,516,416
1900	648	135,145	53,393	188,538	3,152,694

In any particular year, however, one or two great strikes may affect a large number of men in a few establishments. To understand the situation better, it is desirable to separate these gigantic strikes from the figures of the more ordinary disputes. The remaining figures would show us a large number of establishments, and small averages of strikers and of losses, — all in comparison with the total figures. The next Board of Trade table gives such a list of the principal strikes in Great Britain, 1891–1900, inclusive: —

Year.	Principal disputes of the year.			All other disputes.		
	Trade and locality.	Number of workpeople affected.	Aggregate duration in working days.	Number of disputes.	Number of workpeople affected.	Aggregate duration in working days.
1891	No very large dispute . .	—	—	906	267,460	6,809,371
1892	Coal miners (Durham) .	75,000	4,275,000	698	231,799	7,156,936
	Textile operatives (Lancashire and Cheshire) . .	50,000	5,950,000			
1893	Coal miners (federated districts)	300,000	23,700,000	781	246,386	5,165,062
	Coal miners (South Wales)	90,000	2,340,000			
1894	Coal miners (Scotland) .	70,000	5,600,000	928	255,248	3,929,010
1895	Boot and shoe operatives	46,000	1,564,000	744	217,123	4,160,670
1896	No very large dispute . .	—	—	926	198,190	3,746,368
1897	Engineers	47,500	5,731,000	863	182,767	4,614,523
1898	Engineers, continued . .		1,118,000	710	153,907	2,521,478
	Coal miners (South Wales)	100,000	11,650,000			
1899	No very large dispute . .	—	—	719	180,217	2,516,416
1900	No very large dispute . .	—	—	648	188,538	3,152,694

The table shows that between 1891 and 1900, out of 7,931 disputes, "nearly sixty per cent. of the total magnitude, as measured by aggregate duration, was accounted for by eight large disputes," the great majority being trifling affairs. In 1900 "488 of the recorded disputes (or about three fourths of the whole number) accounted for only 9 per cent. of the total time lost, and this after the very small disputes have been excluded."

The largest number of strikes in the United States, for the period covered by the tables, took place in the building trades, in the manufacture of clothing, in the coal and coke industries, in the manufacture of tobacco and of boots and shoes, in the transportation industries, in printing and publishing establishments, and in stone quarries.

The trade-unions ordered 63.46 per cent. of all the strikes occurring between January 1, 1881, and Decem-

ber 31, 1900; thus more than one third of the strikes were instituted by men who went out without orders from labor organizations. In nine of the more strongly organized trades, however, 76 per cent. of the strikes were ordered by the organizations; about seven eighths of these occurred in the building trades. In the boot and shoe trades the number of lockouts is especially large. The building trades, the glass workers, and the tobacco workers have also an unusually large number of lockouts.

As regards statistics of the causes that lead to strikes, we find, according to the best authorities in this country, that 70 per cent. have been ordered for some ten simple causes, and 60 per cent. for five causes. The next table gives the figures in regard to the leading causes of strikes.

LEADING CAUSES OF STRIKES, JANUARY 1, 1881, TO DECEMBER 31, 1900.

Cause or object.	Establishments.	Per cent.
For increase of wages	33,731	28.70
For increase of wages and reduction of hours	13,201	11.23
For reduction of hours	13,116	11.16
Against reduction of wages	8,423	7.17
In sympathy with strike elsewhere	4,078	3.47
Against employment of non-union men	2,751	2.34
For adoption of new scale	2,742	2.33
For recognition of union	1,649	1.40
For increase of wages and recognition of union	1,111	.95
For enforcement of union rules	1,068	.91
For adoption of union scale	928	.79
For reduction of hours and against being compelled to board with employer	927	.79
Against task system	917	.78
For reduction of hours and against task system	901	.77
For adoption of union rules and union scale	880	.75
For reinstatement of discharged employees	868	.74
For increase of wages, Saturday half-holiday, and privilege of working for employers not members of masters' association	800	.68

Cause or object.	Establishments.	Per cent.
Against reduction of wages and working overtime	750	.64
For increase of wages and against use of material from non-union establishment	750	.64
For increase of wages and Saturday half-holiday	729	.62
Total of 20 leading causes	90,320	76.86
All other causes (1,383)	27,189	23.14
Total for the United States	117,509	100.00

The following table shows the causes of strikes by general groups, 1881–1900: —

Causes.	Number of establishments involved in strikes.	Per cent.
For increase of wages and adoption of scales	64,321	41.3
Against decrease of wages	10,843	6.9
For reduction of hours, overtime pay, holidays, etc.	40,228	25.8
Regarding time and method of paying wages, fines, screening of coal, company stores, etc.	8,254	5.3
For recognition of union and adoption of union rules	9,968	6.4
In sympathy with strikers or men locked out elsewhere	4,700	3.0
Against employment of non-union men, foremen, foreigners, negroes, etc.	8,273	5.3
For employment, retention, or reinstatement of persons	1,638	1.05
Regarding apprenticeship and employment of children	1,223	.78
Regarding use of machinery and appliances	221	.14
Regarding working rules and miscellaneous matters	6,075	3.9
	155,744	100.00

Other statistics show that 58.26 per cent. of American strikes have been due to the desire of workingmen for a rise in wages or a maintenance of them, or a reduction of the working hours. More than three fourths of all strikes are begun for twenty leading causes, most of which bear upon wages or hours.

The figures as to the success and the failure of strikes and lockouts cannot claim a high degree of accuracy, as the reports are often obtained six months or a year after a dispute occurred. But, taking these figures as the best that can be had, we find that in a little over one half (50.77 per cent.) of the whole number of establishments involved in strikes, the strikers succeeded. They failed in 36.19 per cent.; they partially succeeded in 13.04 per cent. In the disputes where the employers forced the men out, the operators succeeded in 42.93 per cent. of the establishments; they compromised in 6.28 per cent., and they failed in 50.79 per cent. The likeness of these figures shows that men are apt to make about as many mistakes on one side of labor disputes as on the other.

The most difficult part of statistical work connected with labor disputes is to discover the amounts actually lost through them by each party. The usual way to learn what the workingmen have lost is to compute the number of days that the strike lasts, and then multiply this figure by the wages per day that the men generally make. On this basis we should find that the wages lost to employees in the United States during the twenty years 1881–1900 amounted to $257,863,478. The trade-unions, out of their treasuries, contributed during the same time, as assistance to striking workmen, $16,174,793. The loss to employers from

strikes in the same time, estimated on the basis of the average profits for this period (supposing that such a profit would have been made in the absence of strikes for the twenty years), is reckoned at $122,731,121.

The loss resulting from lockouts in the same period is calculated, by following similar methods, to have been, to employees, $48,819,745 in wages foregone, and $3,451,461 in assistance from union treasuries; to employers, $19,927,983.

The total loss to employees from strikes and lockouts was $306,683,223; to employers, $142,659,104. The grand total of loss to both parties would be in round numbers $449,000,000, while the whole number of persons thrown out of work in the United States at different times in these twenty years was 6,610,001.

These are large figures for a civilized country to face. Even when it is a matter of a division of the $449,000,000 among the 127,422 establishments involved, it is a tremendous bill. The statisticians remind us, indeed, that it is a bill running through twenty years, so that it means only an annual loss of some twenty-two and a half million dollars to the country through this period. The optimist will compare this amount with the whole annual receipts of the laboring classes, amounting to billions of dollars, and will tell us that the loss is less than one day's wages a year to each workingman employed in industries where strikes are likely to occur.

The money losses to the workers by strikes or lockouts are probably of much less consequence than the losses to the public, and the moral results in the alienation of employers and employed. A favorable qualification of importance is that we must not take it for

granted that, if these disputes had not occurred, the workmen would certainly have been just so many days' wages better off. On the contrary, the workman is apt to be sick or disabled a part of every year, and he may also lie off for other reasons, so that the average number of work days, in fairly good times, may be only two hundred out of a possible three hundred and thirteen in a Christian country. When we calculate the number of days a man has been hindered from working, the calculation is thus liable to include a considerable number of days when he would probably not have been working, had the dispute not happened. After a prolonged strike, again, the manufacturer may find that he has cleared off his stock at better prices than he would have received had the strike not occurred, and he has before him a strong market, making a demand which leads to steady work and good wages for a considerable time before pressing needs are satisfied. For these and other reasons, the usual simple calculations of total losses to employers and employed, caused by strikes and lockouts, are open to the charge of considerable uncertainty and exaggeration.

"The right to strike" is to-day the right of the union to strike, not of the individual workman. He surrenders any individual right of the kind entirely when he joins the trade-union. After that he must take part in a strike ordered by the union, whether he believes it to be right or judicious or not. If, on the contrary, he desires to strike, and the union says that a strike shall not take place, he must refrain from striking, however ample the justification may be to his private mind. He is not allowed a voice in the matter beyond his simple vote in the meeting which orders or forbids a strike.

The contrast between the rights and privileges of the single, unassociated workman and those of members of the trade-union is sufficiently impressive. The single workingman is comparatively at the mercy of the employer, who may discharge him for good reason or for none. The employer will hesitate to claim such powers when he is confronted by a trade-union to which practically all the men in his employment belong. The individual workman, who has just been discharged, immediately seeks work elsewhere. He does not consider that he has a claim to be treated any longer as an employee of that establishment. Perhaps he does not expect or desire to return. He may privately relate his disagreeable experience to other workmen whom he chances to meet and who think of applying for employment in that establishment; but he does not stand upon the streets near the works, to interfere with persons about to apply for employment, — that is to say, he does not practice "intimidation" or "picketing." On the other hand, as I have said, the peculiar feature of an ordinary strike is that men who have agreed, as a body, to quit working for their employer unless he will grant certain conditions, leave work when he refuses, but do not consider that they have ceased to be, in some way at least, connected with the establishment. They apparently hold that the situations still belong to them, although they have quit work of their own free will and are no longer receiving wages. Any person offering to take such a vacant place is a "scab," or a "rat," or a "blackleg," or a "strike-breaker;" in any case he is declared a "traitor" to the cause of "labor" and a conspirator with the employer against right and equity.

Under the régime of the collective bargain, then, the workman has given up the right of bargaining for himself. The trade-union to which he has contributed from time to time has become his representative. The "social compact" theory of Rousseau is rejected to-day by the great majority of students of political science, but there is a real compact in the case of every trade-unionist, by which he surrenders his individual rights to the majority of the union. The amount of freedom, in the old sense of the word, which the modern trade-unionist has left is exceeding small. He is entirely subject to majority rule in this industrial democracy. And more and more this democracy resorts to representation, leaving behind the town-meeting method.

In order to make a strike effective and bring the employer to terms, the strikers must be in control of the particular labor market, so as to keep the employer from supplying the places of the men on strike with other men who are for any reason willing to take their places. If the union embraces a large majority of the men capable of filling these places, the employer must soon give in. But if the union is not thus master of the situation beforehand, it will resort to a practice to which another military name has been given, *i. e.*, "picketing." The industrial army on strike throws out small detachments, generally consisting of a few persons, who are stationed near the works where the strike is on, and whose object is to engage in conversation with persons apparently seeking work there, and to attempt to dissuade them from so doing. The unionist usually considers that he has a perfect right to do this peaceably, to any extent. But obviously a person seeking work has some rights

also, and among these is a right not to be bothered and beset by other persons, on his way to work which he has freely chosen. As a matter of the commonest fact, "peaceful persuasion" of the would-be worker from engaging with the establishment affected by the strike soon turns to threats of various kinds against his person or property. "Intimidation" is the term generally used to include all such threats. The law on this subject is essentially the same in Great Britain and in this country. The law seeks to maintain at the same time the right of free speech for the striker and the right of the other man to seek work in peace. Some notion of the extreme care needed to discriminate between proper and improper acts in this direction may be derived from this brief abstract of the English laws in respect to picketing.

"These provisions subject to a penalty of fine or imprisonment every person who, with a view to compel any other person to abstain from doing, or to do, any act which such other person has a legal right to do or abstain from doing, wrongfully and without legal authority, (1) Uses violence to or intimidates such person, or his wife or children, or injures his property; or (2) Persistently follows such other person about from place to place; or (3) Hides any tools, clothes, or other property owned or used by such other person, or deprives him of or hinders him in the use thereof; or (4) Watches or besets the house or other place where such person resides, or works, or carries on business, or happens to be, or the approach to such house or place; or (5) Follows such other person with two or more other persons in a disorderly manner in or through any street or road. Attending

at or near the house or place where a person resides, or works, or carries on business, or happens to be, or the approach to such house or place, in order to obtain or communicate information, shall not be deemed a watching or besetting within the meaning of the Act." In these days of the printing-press and the telegraph, when it is very easy to notify workmen and all concerned of the fact of a strike, the practice of posting pickets is evidently a "survival" best relegated to "innocuous desuetude."

We must not forget that the vast mass of labor difficulties in manufacturing establishments are settled without developing into strikes or lockouts, and that the great majority of so-called strikes are petty affairs, soon over. The influence of trade-unions on strikes is plainly to diminish the frequency of them by extending the area over which they spread. In other words, strikes are less numerous and more widespread when they occur than would probably be the case without the organization of workingmen.

The practice of the different trade-unions in respect to the initiation of strikes is diverse. Some national organizations strictly forbid the local unions to order a strike without their approval. Others leave this matter to the local unions, but require certain steps to be taken to secure deliberation and fairness, before a strike is actually ordered. The national trade-union almost invariably demands that the local union shall make an attempt to procure "arbitration" for the dispute before striking. If a local union strikes without authority, the national union will not only refuse financial support to the strikers, but will even go so far as to expel from the body strikers who refuse

to obey orders to return to work. In England, as we have seen, the organization of trade-unions has gone farther than in this country, and there the boiler makers' and iron shipbuilders' unions have fined or suspended disobedient members and officials. The same medicine was given in 1899 to the national union of boot and shoe operatives. Under an agreement with the Employers Federation, it was fined £300 by the umpire, because it did not expel certain employees or induce them to return to work.

Strikes have been strictly legal in Great Britain since 1871, and in the United States no other view of them has been taken by the courts since 1842. But, as all men know, considerable strikes often lead to acts which are pronounced illegal by the courts and inequitable by public opinion.

It is the natural desire of each party to a labor dispute of magnitude to strengthen its cause by presenting the entire front of the working classes on one side, or of the employing class on the other, to the opposite party. In uncivilized society the common course for a person engaged in a feud is to extend the feud as far as possible, embroiling if he can the whole community, and lining up everybody on one side or the other, until the feud is fought out to the bitter end. The survival of such a desire appears in two phenomena of labor disputes in a civilized state which are decisively rejected and condemned by the fair-minded. One is the Blacklist and the other is the Boycott.

II. THE BLACKLIST AND THE BOYCOTT

It will be convenient to consider the blacklist before the boycott, as the simpler matter of the two. The

blacklist is a list kept by the employer, of employees who have been discharged "for good reason" from his establishment. "Good reason" would mean, from the employer's point of view, incompetence, drunkenness, profanity, and like offences. There is evidently no valid argument why industrial establishments, especially large ones, should not keep lists, for their own convenience, of persons discharged for reasons which should prevent their reëmployment in the same shop or factory. The offence in the eyes of workingmen consists in the circulation of such lists of persons discharged among other establishments of the same kind, in order to prevent the men named in it from obtaining employment. But the common practice in many industries is to give to an employee discharged, or leaving of his own accord, a written "character." On a railway, for instance, when a man of experience applies for a position, the question is at once asked if he has a recommendation from his last employer. If he cannot present such a recommendation, his application is apt to be in vain.

The complaints of workingmen on this score are not that railways or other employers refuse to give so-called "recommendations," or "characters," but that railways in particular have an understanding with each other that the recommendation in many cases is to be taken as a recommendation *not* to employ the person named. Trade-unionists often enlarge upon the alleged wide prevalence of this practice. They say, for instance, that by the common use of paper with a certain watermark it appears at once to the employer that the recommendation is to be considered of no worth. They assert with much feeling that many other devices are em-

ployed to the same effect. No doubt there is a good deal of fancy brought into play by workingmen when they discuss this subject. As Mr. Aldace F. Walker, formerly a member of the United States Interstate Railway Commission, says, "The blacklist is largely an imaginary grievance. If a servant is unfaithful, it is not only the right, but the duty of the master to tell the truth upon inquiry. If he tells untruth, he is liable to make full compensation at the common law. If he tells the truth, it protects faithful employees, and it is absolutely in their interest that this should be done." [1] On the other hand, the blacklist was formerly much in use in this country, as Professor R. T. Ely has shown in his work on the "Labor Movement in America" (pp. 110, 111). Mr. John Graham Brooks, in his recent volume, "The Social Unrest," has noted the same fact (p. 35).

There are now stringent laws for the nation and in many of the commonwealths against the practice. So far as law can reach it, it seems to have practically disappeared. Railway presidents and managers, of course, deny the existence of such an illegal custom on their lines. They say that they agree with Mr. P. M. Arthur that the method savors of persecution, and that they have no right to pursue an employee who has left them, for good or for bad reasons, and exert themselves to prevent his securing employment elsewhere.[2] But when the trade-unionists would strictly prevent the employer from communicating to any other employer in his line of business the fact that a man who has left his employ was active in a recent strike, they seem

[1] *Report of the Industrial Commission*, vol. iv. p. 772.
[2] *Ibid.* p. 123.

to occupy untenable ground. Trade-unionists claim that they have a complete right to refuse to work with non-unionists. To assert, then, that an employer has no right to refuse to employ a man who has been active in striking elsewhere seems an instance of asking rights and denying liberties. The mere giving of information by one employer to another who seeks it, in regard to the record of a workman, is a perfectly proper thing in the eyes of disinterested persons. If the second employer is not at all desirous of engaging men who have been active in strike movements, he certainly has a right to gratify his feelings in this respect.

It is very easy for a man who has been discharged from a factory and cannot find work for some time after to account for his failure by asserting that his name is on a blacklist. The fact, in many cases, that he is incompetent or immoral would be to many persons a much more satisfactory explanation of his failure. The analogy between giving a "character" to a domestic servant seeking a new situation, and giving a "recommendation" to a discharged workman is not to be pressed hard, but a little consideration would show that the rights of the employers in both instances are not to be set down at zero. A domestic servant who has been dismissed for lying, drunkenness, theft, or general incompetence, has no right to complain of a former employer if she should communicate this fact to an interested person who wishes, for good reasons, to know the record of the servant in question. But if a lady should take pains, when she has parted with a domestic of comparatively good character, who has not suited her in all respects, to spread abroad among the ladies of her acquaintance statements to the effect

that the said servant is an utterly undesirable person, this would be persecution of an unwarrantable kind. Blacklisting, as it appears to the trade-unionist, is such a method of organized persecution on the part of an employer. He revengefully follows up a man who has left his employ, and tries to keep him out of work elsewhere, and thus inflicts on him hardship and suffering. The employer attempts to continue a private feud, to make it a public matter, and to range the whole community on one side or the other of his dispute.

If it is difficult at times to distinguish between giving proper and reasonable information concerning the competency and character of a discharged employee, and persecution, the solution seems to be found in the motive of the employer. If he simply desires to give needed information, he is not at fault. But if he keeps on the track of a discharged employee to prevent him from earning his living in the same trade or any other trade, he is guilty of persecution and should be punished for that offence. It is natural that trade-unionists should denounce persecution of this kind. The principle that no one has a right to keep a good workman out of work will, however, bear application in many quarters.

Consumers' leagues publish what they call "white lists" in various cities, of employers who consult the convenience and health of their employees in respect to the conditions of labor. The motive of the persons who construct such lists is not to take away custom from firms against whom they cherish hostile feelings. Their purpose is to promote the welfare and comfort of working people, and they take this semi-public method to furnish to persons interested the names of

employers who treat their workers with consideration. This is practically offering a premium to employers to introduce such conditions and thus enjoy the benefit of free advertising. The absence of the name of any firm from such a list cannot be construed as an attack upon it. The motive is not malice toward an employer, but concern for workpeople. No attempt, I believe, has ever been made to bring a consumers' league under the provisions of the laws against blacklisting or conspiracy.

"Boycott" is a word with a history. In September, 1880, Mr. Parnell, the famous Irish agitator, speaking at Ennis, advised his hearers to punish a man who rented a farm from which another had been evicted, "by isolating him from his kind as if he was a leper of old." His advice was taken up systematically, and the practice was widely extended in the policies followed by the Irish Land League. A certain Captain Boycott, the agent of Lord Erne at Lough Mask, Connemara, Ireland, was a conspicuous subject of the treatment advised by Mr. Parnell. He had refused to rent land at figures fixed by would-be tenants. A policy of non-intercourse was proclaimed against him. No one took his land; no one worked for him; no one supplied him goods, or would assist him in any way. His servants were forced to leave him, and his crops were left unharvested. This was the result of the formation of a sort of trade-union of tenants; and the captain, obliged to do all the work of his house and field, and for a long time under police protection, has given to our language the word "boycott." [1]

[1] The Century Dictionary definition is "an organized attempt to coerce a person or party into compliance with some demand, by com-

Boycotting is preëminently a practice to be judged according to the degree in which it occurs. As in the case of the blacklist, questions of motive are of the first importance to the judgment to be passed upon boycotts. Professor R. T. Ely, in his "History of the Labor Movement" (p. 297), forcibly points out that "the boycott has been employed against obnoxious individuals from time immemorial. In 1327 the citizens of Canterbury, England, boycotted the monks of Christ's church, meeting in an open field, and passing these resolutions among others: 'That no one, under penalties to be imposed by the city, should inhabit the prior's houses; that no one should buy, sell, or exchange drinks or victuals with the monastery, under similar penalties.' The history of the United States may almost be said to open with a boycott of English tea and other wares, which, approved and supported by our best and most patriotic citizens, has been repeated several times. A systematic boycott of slave-made products was begun by the Abolitionists fifty years ago. Temperance people have used the boycott to repress the liquor nuisance time and time again, and men who have endeavored to draw profit from the

bining to abstain, and compel others to abstain, from having any business or social relations with him or them; an organized persecution of a person or company, as a means of coercion or intimidation, or of retaliation for some act or refusal to act in a particular way;" and it quotes: "Boycotting was not only used to punish evicting landlords and agents, tenants guilty of paying rent and tradesmen who ventured to hold dealings with those against whom the Land League had pronounced its anathema; but the League was now strong enough to use this means as an instrument of extending its organization and filling its coffers. Shopkeepers who refused to join and subscribe received reason to believe that they would be deprived of their customers; recalcitrant farmers found themselves without a market for their crops and cattle.—*Annual Register*, 1880."

corruption of young people, have been driven from their homes by this weapon. Clergymen have employed the boycott repeatedly, and they have recently recommended that it be directed against the Sunday newspaper. Railways have entered into combinations, and have aided one another to boycott innocent members of the community and other companies. Associations of business men have often boycotted those who would not unite with them in some money-making scheme." Commissioner Wright, in his "Industrial Evolution in the United States" (p. 318), writes to the same effect: "The process is very old. . . . The method has often been considered an evidence of the loftiest patriotism."

The boycott has long been a favorite weapon of the striker. In the great strike of 1899 on the trolley lines in Cleveland, O., for instance, the strikers refrained from patronizing the trolley lines themselves, and called upon their friends and acquaintances and the public in general to follow their example. This was what is termed "a simple boycott." As it proved ineffective, they went on to what is known as "the compound boycott," by refusing to have any business or social dealings with merchants or others who rode in the cars while the strike was on.

In his testimony before the Industrial Commission Mr. Gompers defended the use of the boycott in very emphatic language.[1] Like many other unionists, he sets aside the distinction between the simple and the compound boycott, and denies the right of the courts to interfere. As a natural result of this attitude of their leaders, the trade-unions have been altogether too much given in recent years to the proclaiming of

[1] *Report*, vol. xvii. p. lxvi; see, also, pp. 49, 50.

boycotts against employers with whom they had difficulties. The American Federation of Labor has repeatedly sought to limit the practice. It has always maintained the legitimacy and the value of the boycott, but the extremes to which the method has been carried by local unions have led to its imposing several severe restrictions on "the continuous and overwhelming flood of boycott circulars, sent to local unions indiscriminately without authority of the Federation." The Executive Council in 1899 resolved "That no boycott shall be indorsed by any central labor union chartered by the American Federation of Labor unless the local union desiring the same has, before declaring the boycott, submitted the matter in dispute to the central body for investigation, and every effort at amicable adjustment has been exhausted." The regular procedure is to refer the matter to the president, with authority to act. The president writes to the firm complained of, states the alleged grievance, mentions the action which the Federation is desired to take, and asks if an understanding cannot be reached. In 1897 the president said that fully one third of the cases presented were settled amicably in this way, through the intervention of the Federation, without boycotts. It is only when he is convinced that a firm will not make concessions which, from his point of view, seem fair, that the boycott is applied.

The extreme partisanship of the unionist's position will sufficiently appear if one should go through Mr. Gompers' statement and simply substitute the term "blacklist" for "boycott" wherever this appears. One might then pertinently ask Mr. Gompers if he were convinced by such an argument in favor of the

blacklist, which is essentially an attempt by employers to boycott a workman. The evil thing in both cases is, as I have said, the malicious attempt to ruin a man's business or work by combination against him. Mr. Gompers seems to assert that it is one of the chief rights of man when practised in the form of the boycott, and one of the worst of crimes when practised in the shape of the blacklist.

In fact, the compound boycott is an attempt to involve the entire community in what should be a private dispute.[1] No one should question the right of strikers on a trolley line to refrain from riding on the cars and to counsel their friends and acquaintances to do the same, until the company has granted the demands of the strikers. Boycotting confined to moderate practices of this sort is natural and defensible, and it is difficult to see how the law can be invoked to suppress it. But when the strikers declare through their union that they will not buy cigars of a certain tobacconist who has been seen riding on the cars after the strike was declared, and call upon all other persons to imitate their example, they attempt an organized persecution of him because of an act entirely within his rights. Such persecution society should not and will not allow. With great unanimity the courts of England and America have held that boycotts are illegal. Some States have declared them unlawful in set terms. In numerous cases the courts have granted damages to employers injured by them, and have frequently issued injunctions to restrain trade-unions

[1] The general principles valid against such attempts to usurp the power of the state to coerce the individual were admirably expounded by Sir J. F. Stephen in the *Nineteenth Century* for December, 1886, in an article on the "Suppression of Boycotting."

from carrying them on. The judges have held that the right to conduct a lawful business without coercion is part of the fundamental rights of liberty and property.

The wisest leaders of the workingmen are coming to see the substantial likeness of the boycott and the blacklist, and are advising their fellow-workmen to discontinue the use of the boycott as a weapon of industrial warfare. Disinterested third parties have no difficulty in applying the same principles to both practices, and condemn them both as in violation of common equity. Here, as in so many other directions, the mass of trade-unionists are so occupied with claiming rights and privileges and powers that they disclaim all responsibility for the manner in which they exercise these powers, rights, and privileges. The trade-union theory with respect to blacklists and lockouts is too often that of the South African chieftain who was asked to define right and wrong: "Right is when I take my enemy's cattle; wrong is when he takes mine." The application of a little elementary logic and ethics would lead the trade-unionist to revise his argument and change his position.[1]

[1] In addition to the references at the end of chapter ii., see volumes v. and xvi. of the *Report of the Industrial Commission;* parts iv. and v. of volume xvii.; the Sixteenth Annual Report of the Commissioner of Labor; *The Law of Trade and Labor Combinations*, by F. H. Cooke; F. J. Stimson's *Handbook to the Labor Law of the United States*, and *Trade-Union Law and Cases*, by H. Cohen and G. Howell.

CHAPTER IX

SOME RIGHTS AND DUTIES OF THE PUBLIC

THERE is a third party to all disputes between workmen and employers, and this is the society in which they live and of which they form an integral part. Strictly speaking, we should say "the remainder of the entire society." But this other part of society than the two disputing bodies is constantly changing its content as the disputants change.[1] For convenience' sake we may speak of this inevitable third party as "the Public." It is a vast majority, usually silent, but always affected injuriously by even the peaceful stoppage of ordinary production of the comforts of life. How much more it may be affected to its harm by a disturbance of the supply of a necessity of civilized life, millions of Americans learned in the last months of the great coal strike of 1902. Still more

[1] One great body of people does not change, as it does not strike, — the farmers. They remain steadily the most considerable part of "the innocent public," as Mr. J. M. Stahl said at Chicago in 1901; "whether the number of employers, the number of laborers, the capital used, or the labor employed be considered; more than twice as much actual capital is employed in farming as in any other industry in this country. . . . The gross earnings of all the railways of the country are less than one half the annual product of our farms. The capital employed in manufacture is only one third of that employed in farming, and the laborers are an even less fraction. . . . Farmers constitute by long odds the most important class of the public, innocent or otherwise, whether capital or labor, employer or laborer be considered. . . . In all our history there has not been a lockout or a strike on the farm." (*Industrial Conciliation*, pp. 238, 239.)

sharply are its happiness and prosperity challenged when the strike is accompanied, as too many large strikes are, with lawless violence, when the streets are filled with an angry mob bent on keeping workmen from obtaining employment in a factory, or on preventing the trolley cars from performing their necessary service in safety. In no case of a considerable strike is "the public," however we define it, entirely exempt from inconvenience, loss, or injury; in extreme cases many persons are terrorized and their interests deeply affected to their hurt.

The large body of non-unionist workmen, in the industry in which a strike is on, who are in any way intimidated and hence cannot resort freely to the work which they would like to do, form one portion of this public, the portion most intimately affected by "the strike with violence." The vast mass of persons who are not workpeople, but business men, professional men, teachers, and other skilled persons on salaries, and their families, are another large part of "the public." Even the workmen in all other lines of industry except the one in which the strike occurs are, for the time being, also a portion of this public. When the anthracite miners, for instance, are on strike, every workman in the country who uses anthracite coal is vitally interested in a speedy adjustment of the dispute as a member of "the public." No personification of "Labor," no declamation about "the toiling masses" avails to hide the fact at such a time that coal must be had to keep wife and children from freezing. The interests of all other workingmen are not so bound up with those of the miners that the former stand on one side, separated from the public. They

are a part of the public, and while this public, to which employers and employed are rightly responsible, varies with each dispute, it is always the largest body. However great the number of strikers at Pittsburg may be, in 1877 or in 1892, it is a small band by the side of the hundreds of thousands of persons in the city whose first interest is peace and order and the regular production of the necessities and comforts of life.

There is no portion of society which is selfishly interested in violence and disorder and the interruption of production except "the dangerous classes," against whom society has always to be on its guard. All others are dependent for their peace and happiness on the smooth and effective transaction of production and exchange. Many thousands of men must work regularly that society may eat and drink and be clothed and sheltered. Many other thousands must be active early and late that society may gratify countless other wants than those of mere subsistence. Society pays for these services, and has no thought of oppressing or exploiting the persons who render them. It has supplied the conditions of peace and safety under which the producing classes may labor to their own profit and to the profit of all other members of society. It gives to the workmen the aid of just laws and equal protection. It keeps schools open for their children, and provides public sanitation for their families.

Under these circumstances the Public has a right to assert that its interests are supreme, for they include the general interests of all classes and conditions of men, and are antagonistic to none. The producers (employers and employed) being guaranteed their fundamental rights as citizens by society, through its agent,

the government, it is their duty to produce and satisfy the incessant wants of the society in which they are set. Unless the producers produce, they have no claim to protection and aid from the general body. If they wish to withdraw from production, society has no objection, so long as they can otherwise support themselves. Society has been buying commodities or services from them of their own free will, and it has no desire to compel them by force to continue to render a particular service or to supply a special commodity.

Negotiation between employers and unionists for a "living wage" or a shorter working day, can be viewed with equanimity by all other parties, no matter how extreme the demands of either party at the beginning, so long as both parties are in a position to compete on equal terms, neither being under duress of any kind, and so long as the outcome soon to be expected is a bargain of some sort, not a fall into anarchy and violence. Let the unions get all they can get in the way of higher wages and fewer hours, and let the employers get all they can in the way of lower wages and longer days. The important points are, first, that the two parties shall be in a position to bargain "competently," as the economists would say, and second, that they *shall* conclude a bargain, and not arrest production and disturb the public peace by refusing to make a bargain, and rejecting all offers to have a settlement made by others, if they will not make it themselves.

As for the first point, the laws of the land should authorize and legalize to the fullest extent the practice of contracts between combinations of workmen and combinations of employers, or between a single employer and a combination of workmen. Combinations

being fully legalized and having full power to make contracts of all kinds bearing upon production, the public can then say to both parties, "We have given you the necessary rights and powers to carry on the business which you desire to carry on. You must, then, recognize equally the responsibilities and duties which go hand in hand with your rights and powers. We have put you in a position to bargain freely and fairly. Therefore you *shall agree*, or you shall go out of business. We will not allow virtual anarchy in the labor world as a third course, which you are free to choose if you will."

The chief interest of the public is in obtaining the service or the commodity, not in the terms or conditions under which it is forthcoming. That these conditions, especially for the workpeople, should be such as conduce to the health and comfort and prosperity of those who serve it and produce for it is certainly a matter of high concern to it, but not its chief concern. The terms are, for the most part, left by it to the two active parties to the labor contract; they are for the employer and the employed to adjust between themselves. Neither the employer nor the employed, then, has a right to stand out for such extreme terms that they will not be accepted by the other party unless it is forced into acceptance of them by a public which has been made to suffer grievously by the cessation of production or of service, and is therefore clamorous for a settlement of the dispute. It is the business of the two bargainers to make a bargain. Neither has a right to throw an injured public into the scales in order to overweight its claims.

That order and peace shall be kept is a very elemen-

tary demand of the public upon the world of industry. No plea of the righteousness of its cause made by either party to a labor dispute can be allowed to excuse actions of a criminal nature. The immediate putting down of all violence and lawlessness, even if this should require the entire militia of the State and all the regular troops of the United States available, is a primary duty of a civilized American community, — is a just exercise of its rights of self-assertion and self-defence. It is a duty which it owes to the industrial world as well. Neither party to a labor dispute can suppose that it has any right to settle the trouble by mere force, by whatsoever means it chooses to employ. No course could be more hostile to its own permanence or prosperity as an industrial factor. Each has a right to appeal to the law, the will of the community, but neither has a right to make law with fist or rifle. The first thing which the public owes to employers and employed is the impartial enforcement of equal laws. If either party in a given instance believes that the law applied is inequitable and the application unfair, its appeal lies, not to fist-right, but to the conscience and reason of the community, and it should continue to agitate until the law or the practice is reformed.

In order to reach this end the public owes it to both contending parties to understand the case. If the facts are few and simple, it has the right to ask that they be spread informally before the community, through the press or otherwise. It is a duty which it owes to both parties to demand that full statements be made for the guidance of public opinion. If the facts needed are not few but many, and not simple but complicated, then the public owes it to both par-

ties to call in experts who shall represent it in the investigation of the facts and supply material for a wise and impartial judgment. Leaving entirely aside the further matter of enforcing such a judgment, the public, in the absence of industrial courts entrusted with hearing such cases, has a right to know the facts and to learn the opinions pronounced on them by a committee of experts. It owes to both parties an early and impartial judgment on their quarrel, if such can be had. Whatever the result may be, the trouble and expense of such a hearing and such a judgment are a trifling matter compared with the cost and trouble of an increasing labor difficulty.

Whoever the agent of inquiry may be, the Commissioner of Labor of the United States,[1] the board of arbitration of a State, a committee of the Civic Federation, or any other presumably intelligent and disinterested person or persons, information of this kind is a right of the public, and the enforcement of this right is a duty. The public owes it to both contending parties to supply them what they cannot so easily supply themselves, — a method of ascertainment and statement of the facts and the issues involved which shall carry with it a strong presumption of competence and impartiality.

Of other rights and other duties of the public in

[1] The United States Commissioner of Labor was charged by the President with an investigation of the anthracite coal strike in June, 1902, and he made his report in the same month. By some mischance, this report, which made substantially the same recommendations as the later report of the Commission, was not published until November, 1902. Its prompt publication in June might have saved much of the strain and injury of the next six months. The public was long in the dark as to the simplest facts of the situation in the anthracite coal mines.

labor troubles there may be question, but its full right to enforce peace and order thoroughly and relentlessly, and its duty to help to a settlement of disputes by public investigation and a public verdict rendered by experts can hardly be doubted. The so-called "compulsory investigation" is favored to-day in many quarters, by State boards of arbitration and special commissions which have dealt with strikes, in Chicago and in the coal mines, and with revision of the labor laws of Massachusetts, for instance. It corresponds to the publicity which is generally recognized as the first step to take in the regulation of industrial combinations, or trusts. It will satisfy the imperative need for that knowledge of the real situation by which any conciliating or arbitrating authority outside of the trade must be guided in its efforts to restore industrial peace. But the first efforts in this direction should be made by the parties themselves.

CHAPTER X

CONCILIATION IN LABOR DISPUTES

In the daily processes of every industry there is more or less occasion for differences of opinion and judgment and feeling between the workmen themselves and between the workmen and their supervisors, representing the employers. Many slight disputes thus arise, the majority of which are soon settled if there is an average amount of fairness and common sense in both parties, if the foreman is not arbitrary, and if the workmen respect his proper authority. These minor difficulties in regard to such matters, for instance, as fines, assignment of work, and measurement of piecework must be expected to occur continually, as long as human nature is what it is. The first point, in order of time, in the preservation of industrial peace, is the provision of some simple means to prevent these mushrooms from attaining too great size overnight. In each establishment of any considerable size there should be a committee made up of representatives of the workmen and of the employer, to which all minor disputes should at once be referred.

Such shop or factory or mine committees are found quite commonly in European countries, especially in France and Germany. To take a somewhat developed instance, in the weaving mills of D. Peters and Co. at Neviges and Elberfeld, the five hundred workmen are represented in the *Arbeiterausschuss* or *Aeltestenrath*

(council of the workmen, or of the elders) by eight men over thirty years old who have had ten years' service in the works; the workmen choose four of these and the firm names four; one of the partners presides over the council, without a vote. "The council provides for the employees in case of distress or misfortune; oversees the moral conduct of the young, and incites them to self-education in their leisure hours; combats rudeness and drunkenness; helps in the faithful observance of the rules and regulations of the factory, and seeks to prevent carelessness and waste. It takes counsel with the firm in regard to changes in the rules or the rate of wages, the hours of work, protection against danger in the mills, and improvement in the quality and increase in the quantity of product."

In the weaving mill of F. Brandts at München-Gladbach a council with similar powers endeavors "to settle all difficulties before they become formidable. . . . It warns or dismisses incompetent or unfaithful or immoral workers, and saves much friction which might otherwise result." The council, consisting of the president of the sick fund, four representatives of the firm, and eight workpeople, men or women, calls to its aid, in making its decisions, special representatives of different departments of the factory. In the Max Rösler earthenware manufactory at Schlierbach the head of the firm must approve the decrees of the council of senior workmen; he can modify them and refer them back to the council, which consists of a central body and sections for the various departments.

In the H. Freese Venetian-blind factory in Berlin, the *Arbeitervertretung* is made up of four persons named by the firm and eleven named by the workmen

(100 to 120 in number). Workpeople can attend the meetings of this council as spectators, if they wish. Under the last order of the day, "wishes and grievances of workers," any employee has full opportunity to make known a desire or complaint referring to his work or to the conduct of the establishment. In F. Ringhoffer's machine and wagon works at Smichow the council keeps the whole body of workmen (900 in number) informed of its doings by making at least two reports each year, which are distributed at the expense of the firm. Besides supervising the various welfare-institutions of the works, the council cares for the apprentices, decides which men shall be laid off when work is slack, and has numerous other functions. In the Marienhütte iron works near Kotzenau the council consists entirely of workmen chosen by the force.[1] In the Van Marken Yeast and Spirit Manufactory at Delft, Holland, and in the works of the Gebrüder Stork and Co., machinists, at Hengelo, there are "unions for promoting the interests of the employees" which have powers of conciliation.

A consultative committee is an important feature of the great Chaix printing-house in Paris. It has nineteen members — the head of the house, the nine officers of the mutual aid society, the three senior heads of departments and foremen, and the six senior workers. It meets every three months or oftener to consider all matters of internal economy. The Edison Electric Illuminating Company of New York in 1898 invited nominations to a labor council from the employees who had served a year; from this list the company

[1] For an entry from its records showing its methods of oversight and discipline see *A Dividend to Labor*, p. 112.

appointed the members. "During the year many of the suggestions made from the various departments for the safety, comfort, or convenience of the employees were found practically useful and were adopted. Other subjects of administration and labor relations were profitably discussed."

The work-shops of the coal mines of Mariemont and Bascoup in Belgium have maintained "explanation committees" and "conciliation and arbitration councils" with great success since 1876. Each trade of the nine practised in the shops has its committee, composed of six workmen and six officers or foremen, the same officers acting on several committees. Each group sends a delegate to a central committee which deals with questions of general interest.

All such councils and committees facilitate suggestions from the employees for the improvement of the mechanical processes of a trade and for the better management of the works in general. A suggestion system can be successfully carried on still more simply without the intervention of a committee. In every department of the National Cash Register Works at Dayton, O., for example, there is to be found an autographic register which receives suggestions in duplicate, the employee retaining his own draft. In 1897 some 4,000 suggestions were made by the employees, of which 1,078 were adopted; in 1898, 2,500 more were offered; the number naturally diminishes as time goes on and the processes improve. Every six months $615 in gold are given in prizes, ranging in size from $5 to $50, to the fifty members of the factory and office forces who have made the best suggestions for improving the manufacture of registers or

the conduct of the business. Officers and heads of departments, with their assistants, are debarred from competition. The prizes are distributed at an out-door festival in summer and at a celebration in the opera-house in winter. An engineering establishment in Dayton likewise invites and rewards suggestions from the employees; a milling machine company of Cincinnati awards $250 semiannually in the same way, paying also actual value for suggestions that have not gained a prize. Similar plans have been adopted by American typewriter, photographic apparatus, piano-forte, chemical, and optical companies.

The good effect that such methods of encouraging suggestions must have upon the morale of a factory is self-evident. Foreign observers like Mr. Alfred Mosely have emphatically contrasted the attitudes of American and English employers with respect to this matter of interesting the workmen in the improvement of the business.[1] A factory where it is easy for the employees to make suggestions, criticisms, or complaints, all of which receive consideration, is far more likely to have a peaceful atmosphere than one in which no such outlets for expression are provided. Many misunderstandings are corrected at the very beginning, and no offence

[1] "It is the mass of the workmen that one must look to for suggestions and inventions. The American manufacturer has recognized that and encourages the initiative of the men and rewards it. In England, I am sorry to say, I do not think our manufacturers have taken that broad-minded view. They stand in the position of saying: 'We know our business; we have nothing to learn; we require you there to do your work; do as you are told: we ask nothing more.' If any man thinks an improvement should be suggested, he goes to the foreman. The foreman says: 'Are you running this business, or am I? Do you want to teach me my work? If so, you had better put on your coat and go.'" — *Report of the Industrial Conference of 1902*, p. 10.

or difficulty of any consequence arises because of them. The method of providing for this expression is not a matter of prime importance, as establishments have proved that have had continuous peace. In the Fairbanks Scale Works "the senior Fairbanks used to say to the men, 'You should always come to me as to a father.'" In the American Waltham Watch Company's works "there is no permanent committee of conciliation, but any aggrieved person can state his grievance to the president, and it receives immediate consideration. Where a number of persons are concerned, they appoint a committee to present their case, experts are called in, the foreman of the department is summoned, and the matter is settled in joint conference." Doubtless many establishments have rules of which these just named are simply concrete instances.

It is thus of prime importance to "resist the beginnings" of industrial troubles with comparatively simple devices within the establishment. The more small disputes are composed within the walls of the factory, the better it is for all concerned. The peace of the large industrial family is most effectually conserved, as in the case of the domestic family, where the outside world remains in ignorance of the difficulty, at least until it is past. Wherever factories or workshops have had the wisdom to institute some simple councils, or committees, or suggestion systems, hundreds and thousands of incipient labor disputes are happily overcome by means of them. They become more efficient and more popular with employer and employed each year of their operation. The employer anxious to stock his factory with the best machinery should not overlook the importance of this machinery for peace.

When no third party is informed, or in any way aware even, of the existence of a dispute, the obviously proper term to apply to the process of settlement is "conciliation;" it might be called shop or factory conciliation. When the difficulty is not thus settled and a third party comes in, we have another phenomenon which it is very desirable to discriminate carefully, using terms as exactly as possible. There is, in fact, a great amount of laxity, inaccuracy, and confusion in the popular use of different terms for methods of composing labor disputes, and there can hardly be said to be more than the beginnings, as yet, of a true scientific use of them in the careful writings of the day. A more precise use of the various words commonly applied would make discussion more profitable and lead more quickly to lasting conclusions.

We have already discussed "collective bargaining," — the term and the thing. The right use of this one phrase introduces much clearness into the treatment of ways of industrial peace. We have seen that it happily indicates the process that takes place when the two parties to a labor contract or a labor dispute negotiate with each other about important matters with a view to the future, no third party intervening in any way. If the two parties agree, the result is a collective bargain by which their future relations are determined, as the future relations of two individuals would likewise be determined when they have "struck a bargain," for themselves and by themselves. No third person is concerned in this collective bargaining. It refers to the future, and has no relation to the interpretation of the terms of an agreement or contract which they may have made in the past. It is a new agreement

made by the two parties themselves for a determinate or indeterminate future period.

This being the meaning of "collective bargaining," a meaning which it is easy to perceive and to retain in mind, the term "arbitration" should never be applied to such dealings between two parties to labor disputes. It should be restricted to denote the precisely opposite phenomenon in the settlement of a labor dispute, when a third party is called in to do the settling, and when he accomplishes this by rendering an authoritative and final decision on the right interpretation of some existing agreement, written or verbal, between the two parties, or on the bearing of some matter of fact or alleged fact upon it. These are matters of the past, decided as such, not by the two parties themselves, but by a third party called in precisely because their bargain was inexactly expressed, or because they cannot agree on the interpretation of some admitted or alleged facts, as regards this bargain.

"Arbitration" is probably the most misused term in the vocabulary of industrial peace. It is often employed in speaking of a labor trouble when no third person is thought of. For instance, it was frequently said in the summer of 1902, "Why do not the striking miners and the coal operators arbitrate their dispute?" when the meaning was, "Why do they not get together and settle the dispute like reasonable men, by making a joint agreement for the future?" But this would have been purely collective bargaining, with no degree of arbitration in it, as it had no reference to the interpretation of a previous contract and brought in no arbiter or umpire. Others said, "Why do not the strikers and the operators call in Bishop

Potter and Archbishop Ireland to arbitrate the matter?" The meaning here was, "Why not call in these two eminent prelates with power to construct an agreement for the two parties which they will agree beforehand to accept?" But this would not be arbitration proper, nor would it be collective bargaining proper, inasmuch as the two parties who should make the bargain themselves would have abdicated in favor of the two so-called "arbitrators." In the exact use of the word, it was true, as the operators said, that there was "nothing to arbitrate." For the whole dispute was not about the terms of an existing agreement, or a mere statement of facts. The thing imperatively called for was the making of a bargain for the immediate future. Disregarding the technicalities of the case, both parties at last agreed to the appointment of a commission "to inquire into, consider, and pass upon the questions in controversy and the causes out of which the controversy arose." The words "arbitration," "conciliation," and "mediation" seem to have been carefully avoided, probably in view of the complications of the situation. "The Anthracite Strike Commission" had no other title. It should remain so known, without mention of mediation, conciliation, or arbitration. The commission's most important recommendation, in fact, was that provision should be made, before the expiration of its award in 1906, for joint agreements or collective bargaining.

When a third person offers his services to two contending parties, in settling any dispute between them, he is proposing himself as a "mediator." If one or both decline his services, it is a case of unsuccessful attempt at mediation. If they accept his offer to do

his best in this rôle, but do not agree to be bound by his award, it is proper to call this a case of successful "mediation." The attempt of the accepted mediator to bring about a truce is successful; the question of a treaty remains to be settled. The New York State Board of Mediation and Arbitration, for example, was empowered by law to offer its services in case of a strike. It published every year a list of cases in which the offer of mediation was rejected, and consequently it went no farther in the business. But the mediation may be successful. Both parties may agree to submit the case to the mediator, but they may decline to bind themselves to accept the award when made. The mediator goes on, therefore, endeavoring to frame a basis of settlement that may be acceptable to both parties, and hoping that they will accept it, although they have not engaged to do so. So long as the parties accepting mediation have not bound themselves to accept the award, the mediator is still only a "conciliator," *i. e.*, one trying to reconcile. If then, in fact, when the award has been made by him, both sides accept it, without a previous agreement to do so, this is an instance of conciliation, not of arbitration. In case the award is rejected by one or both parties, it is an instance of unsuccessful attempt at conciliation. State boards of mediation and arbitration sometimes give a second list of such cases of failure in the attempt to reconcile.

The mediator's offer of his services, however, may produce so good an effect upon the two parties that they agree to accept his award when it shall be made. In this case, it is common to say that they have accepted him as the "arbitrator" of the case. It may

seem pedantic, but it is still well to insist that he shall not be called an " arbitrator " unless there has been a previous agreement, a violation of which is asserted by one party or the other. Thus in the last days of the coal strike of 1902, the President of the United States mediated, — *i. e.*, he invited both parties to a conference for the solution of the difficulty. The strikers suggested, but the operators at first declined, the scheme of a commission. Later they modified the plan, and the President appointed the commission. The parties were so far reconciled, under the influence of the President and of public opinion and of other forces possibly more potent with them, that they agreed to accept the award of the commission when made. The commission appointed by the President thus became virtually the arbitrators, in the popular sense of the term; but, to speak by the card, they were accepted conciliators, with full powers.

Conciliation and arbitration, we see, are terms easily exchanged in common usage; they are often associated, as in the English phrase, " boards of conciliation and arbitration," without an effort to distinguish them; the desire to do so may seem, in some cases, vain and unprofitable. Yet one may perhaps be allowed to say further that " conciliation " should refer properly to a middle stage in peacemaking by a third party, the stage between mediation and arbitration, — collective bargaining being another matter. Mediation rejected comes to nothing. Mediation accepted leads to attempts at conciliation, which may have the same result, if accepted, as if arbitration in the broad sense had been accepted from the start. To submit the whole matter to a third party, without waiting for

mediation or conciliation would usually be more creditable to the two parties concerned. It would be still more a proof of moderation and good sense if they made their own collective bargain, thus dispensing entirely with mediation, conciliation, and arbitration, in all their forms and varieties. Resort to outside persons implies a deficiency in good sense and good feeling somewhere in the two parties. Unfortunately such a deficiency is too common. The English government had to appear as a mediator between the coal miners and the operators in 1893, and President Roosevelt as a mediator between the Pennsylvania miners and operators in 1902. The London Conciliation Committee had shown them the way in the dock strike of 1889.

In any form of attempt at settlement of labor troubles it is a cardinal matter that work shall go on while the conciliators, arbitrators, umpires, commissioners — whatever they may be called — are reaching a conclusion. A stipulation to this effect is often found in collective agreements. This is the one immediate good result when the intervention of a third party to a dispute is accepted. But such intervention does not usually occur until a strike has lasted a considerable time and wrought much harm. The three strikes just mentioned are notable instances. However welcome at last such attempts are, when a suffering public can endure no longer, however preferable to an insensate policy of "fighting it out" to the bitter end, such a method is evidently but a makeshift. There should be some better way of summoning the two contestants to a truce and then to a treaty. The intervention of the mayor, or the governor, or the President, or of a

body of disinterested citizens, is apt to be late, and often it is ineffectual. Always it marks an unsound condition of things that employers and employed refuse to bargain peacefully with each other, and wait for an uncertain time before they are constrained by public opinion to listen to proposals of settlement. The most ill-advised efforts of the external world to conciliate them are always better than the policy of merely "keeping the ring" until one of the fighters gives in through sheer exhaustion, no reasonable solution of the dispute having been arrived at.

Plainly, it is much to be desired that the serious threat of a strike should automatically set in motion some machinery of conciliation. This may be provided by law as in Massachusetts, or by the trade as in England, or by a voluntary association of public-spirited citizens. An excellent instance of this last method has been afforded in the Industrial Department of the Civic Federation of the United States. The Federation in December, 1900, appointed a Conciliation Committee of twelve. This committee acted in averting a threatened coal strike in March, 1901, and in settling the Albany street-car strike in the following June, but it was unable to prevent or settle the United States Steel strike of that year. The Federation went on to form, in December, 1901, an Industrial Department, with a membership of three hundred, which chose an executive committee of thirty-six. Twelve distinguished citizens, including ex-President Cleveland, Mr. Charles Francis Adams, President Eliot, Bishop Potter, Archbishop Ireland, and Mr. Ralph M. Easley, the general secretary of the Federation, represented the public. Twelve active business men, including Senator Hanna, the

president of the Federation, and Mr. C. M. Schwab, represented the employers, and twelve high officials of trade-unions represented the wage-earners. The programme adopted by the Industrial Department was mainly on lines of education; it looked to the holding of national conferences of employers and labor leaders and prominent citizens; to the publication of an industrial journal circulated to promote conciliation, arbitration, collective bargaining, "and a general spirit of broadness and fairness;" to the formation of local affiliated bodies in the chief cities to act in case of local disturbances, and serve as branches of the national body. Two national conferences have since been held, and their proceedings published. Three valuable numbers of the "Monthly Review" have been printed, and local federations have been formed in New York, Chicago, St. Louis, Cleveland, and Boston. Ten other branches are in process of formation.

The fourth object of the Industrial Department was to organize "permanent boards of conciliation, to use their good offices, where possible, before strikes should be declared, and to endeavor to settle strikes under way." The executive committee was not intended to be a board of arbitration, and was not organized to this end. It is a board of conciliation and mediation. The declaration of principles refers to arbitration but once, as a resort in case all efforts at conciliation have failed and both sides of the dispute may wish to refer it to four members of the committee, who may chose a fifth member as umpire. Only once in the first hundred conciliation cases did this happen. The work of the committee is distinctively mediation and conciliation, in a strictly private way. It offers its services,

brings about conferences, and averts strikes by all kinds of private conciliation. It considers that bringing about the formation of "joint trade agreements" is the most important and most lasting work which it can do for industrial peace, and it has been successful in procuring the adoption of a number of such compacts.

The Industrial Department, in its attitude toward trade-unionism, represents a happy mean between employers' associations which mean simply to fight the unions, declaring that they will have no relations with them but those of war, and the socialists who denounce trade agreements as treason to the cause of "labor." It is very strong in the personnel of its executive committee, who can exercise great influence in shaping public opinion; and its conciliation committee has already rendered notable service in averting or ending strikes. The one criticism naturally to be made upon the Department is that it has not kept itself sufficiently "above suspicion" by ruling out politicians from its executive committee. A bi-partisan policy is not so advisable as an utter avoidance of all possible complications with political parties.

The Civic Federation is one of the most admirable examples of the willingness and the ability of American citizens to form voluntary associations for public purposes, with a view to supplement or to amend the law. The Federation, seeing a great public need for healing measures in the industrial world, offers all the prestige and talent of its distinguished members to the promotion of conciliation. It affords a marked contrast to the State boards of arbitration in this distinction of its membership. It has come forward, for

one reason, because these boards have proved incapable of meeting the demands of the situation. It has done good work and will doubtless do much more. It has wisely realized, however, that its best office will be to render itself superfluous by promoting collective agreements on a large scale. Such a voluntary organization as this cannot be relied upon for an indefinite future to do either what the employer and the employed should do for themselves, on one side, or what the public, acting through the government, should do, on the other. The civil service reform associations have been fine examples of these high-class voluntary societies, formed to educate public opinion, and to procure a reform in law when public opinion has become sufficiently instructed concerning the evils in view and the remedies to be desired. It may be, in the case of industrial reform that the remedy will not come through legislation. But it ought to be evident that no self-respecting society should be content to ask eminent citizens like the members of the Industrial Department of the Civic Federation to give their time and their ability permanently to the important social function of keeping industrial peace and order. As leaders toward a better view, and exemplars of a better method than those which have prevailed, these public-spirited citizens deserve high praise. But they are the first to confess that employer and employed should make their own bargains and do their own work of conciliation. Let us turn to what has been done in England and America by the various trades toward the solution of their labor disputes, without calling upon any one outside.

CHAPTER XI

TRADE BOARDS OF CONCILIATION AND ARBITRATION

We have seen in chapter iv. that collective agreements sometimes contain provisions for the settlement of disputes that may arise, as well as arrangements concerning the rates of wages and the hours of work, which are the main part of such agreements. These supplementary provisions may concern the adjustment of conflicts over the proper interpretation of the terms of the agreement, and in this case the difficulty is naturally referred for decision to an arbitrator — a third party with full power to decide the matter finally. When he has spoken, his interpretation virtually becomes a part of the agreement. In order to secure an expert arbitrator, it is often required by the joint agreement that he be chosen from the trade. In this case he may be called a trade arbitrator. The whole process, being arranged by the trade agreement, may be classed as trade conciliation, provision being made by the trade itself for the disposition of all troubles that may arise, without strikes or lockouts, or any recourse to the outside world.

If the arbitrator is chosen for any reason from without the trade (in order, sometimes, to make sure of his impartiality), this would still be in pursuance of a trade provision. It would be trade conciliation, just as shop conciliation would be such if worked through an arbitrator from without. On general

grounds recourse to the external world is undesirable compared with complete settlement of the dispute inside the shop, or within the trade. But this is a matter depending in the latter case largely upon the importance of the trouble and the amount of experience that has been had of collective bargaining.

There can be no doubt, in the light of the English and American record of the last thirty years, of the extreme advisability of incorporating into every joint agreement or collective bargain some provisions in regard to the conciliation or arbitration of any disputes that may arise during the life of the agreement or bargain. American joint agreements (to speak of them first for convenience' sake) are coming to include such regulations quite commonly. To refer back to the joint agreements already given, that of the New York electrical workers says (p. 72) in the paragraph beginning Sixth: "All differences under this agreement are to be settled by arbitration." "Fourth. In the event of a dispute a conference shall be held by a committee, within twenty-four hours after notice is served, consisting of three union electrical contractors employing No. 3 men, chosen by the contractor, and three members of the union, who shall endeavor to adjust the same." The decision of an umpire is referred to, at the end of the same article: he is usually chosen by the committee. The electrical workers of this National Brotherhood have many such joint agreements as the one quoted; and these often provide for such a committee. "The Brotherhood seldom finds it necessary to resort to outside arbitrators."

The second Cincinnati agreement (p. 76) provides for a permanent committee appointed by the Master

Carpenters Exchange and the Carpenters Council, "consisting of an equal number from each, whose duties shall be to mutually adjust all matters of differences or violations of the agreement that may occur from time to time."

The St. Louis plumbers' agreement (p. 78) states that "no general strike shall be ordered . . . without first submitting grievance to the joint conference committee. The decision of a majority of said committee shall be binding on both parties." The secretary of the Association reported in 1901 that "many disputes come up before the conference board, but that they are always settled peaceably. Refusal to arbitrate by either party would not be tolerated, and refusal to abide by decisions of the arbitrators is rare and usually only temporary."

The agreement on the adjustment of disputes made by the Stove Founders Defense Association and the Iron Molders Union has been very successful for thirteen years, in preventing strikes. Before 1891 the two bodies were on very bad terms ; strikes were common. The agreement provides (p. 85) "that this meeting adopt the principle of arbitration," and that a conference committee of six be formed, three from each side. Whenever there is a dispute between a member of the Association and the moulders in his employ, and they cannot settle it amicably, it is to be referred to the presidents of the two national bodies. If they cannot decide it satisfactorily to themselves, "they may, by mutual agreement, summon the conference committee, . . . whose decision by a majority vote shall be final." "Very nearly all disputes which are not settled locally are satisfactorily disposed of by the

presidents of the two organizations or their representatives without summoning the conference committee. Only once since 1891 has the conference committee been called upon to act on a local dispute." Great satisfaction is expressed by the officers of both organizations with the working of the system.

The same union has had for seven years an agreement of the same kind with the National Founders Association, which has a membership of five hundred firms and corporations, with a capital of more than $300,000,000 and 27,000 employees. The Association is managed by a Council of eighteen members, meeting quarterly, the usual executive officers, and a commissioner. If a dispute in a foundry gets beyond the control of the individual founder, he refers the case to the commissioner, who investigates it and tries to effect a settlement. If he fails, the matter goes to a committee of conciliation composed of three representatives from each side. Work goes on as usual until the case has been investigated and conciliation attempted. "Truce once established, a settlement is much more likely to be reached when the principals have had an opportunity to consider calmly and dispassionately the claims of the other side." "Although there have been instances when the terms of the New York Agreement were not adhered to, they are the rare exceptions." [1]

[1] Mr. F. T. Towne, in the *Report of the Industrial Conference of 1902*, pp. 313, 322. Mr. J. F. Valentine of the Union, in speaking of the eleven years' success of its agreement with the Defense Association, — "not one strike has occurred to disturb the continuous harmony," — and of the "fairly successful" experience with the Founders Association, mentions with unusual discrimination the "committee of conciliation, erroneously called a committee of arbitration by some."

The Interstate Coal Agreement (p. 97) is a case of pure collective bargaining: the rules make no provisions for a conference committee or an outside arbitrator; the latter is equally absent from the Illinois agreement. But this provides for conciliation in the case of local trouble between the pit boss and the workmen (p. 106). The pit committee, the union's local president, and the pit boss are empowered to adjust such troubles. In the case of their disagreement, the matter is referred to the superintendent of the company and the president of the miners' local executive board, where such exists; and "shall they fail to adjust it — and in all other cases — it shall be referred to the superintendent of the company and the miners' president of the sub-district; and should they fail to adjust it, it shall be referred in writing to the officials of the company concerned and the State officials of the United Mine Workers of America for adjustment."

The Indiana bituminous field agreement refers all disputes to the board of arbitration, consisting of two operators chosen by the operators of the mine and two miners, with a fifth person to be selected by the four if they cannot agree; the decision of this board is final. In the block-coal district, the system is somewhat simpler.

The Chicago Typothetæ agreement (p. 90) with Typographical Union, No. 16, provides that all differences shall be submitted to arbitration. Each party shall appoint two persons from its membership as an arbitration committee. A decision of the majority shall be conclusive. In case the committee divides equally, it shall choose an umpire who shall not be a unionist, an employer, an office-holder or a candidate,

or an employee of the Typothetæ, or in a kindred trade. This committee is not a standing one, but a special body to be formed only as differences may arise.

The Longshoremen's Association and the Dock Managers' provision for a conciliation board has been given on page 81, article 7. Mr. Samuel Mather, representing a Cleveland firm of managers, stated some three years after its adoption that his business "had been conducted with very great advantage compared with what prevailed before. . . . At the beginning of each year delegates from each local union meet at Cleveland. They have their own meeting, lasting between three and four days, during which time they thresh out what they think they should have, what wages and hours and terms. Then they meet the Dock Managers and give their ultimatum or state their claims. The Dock Managers confer together and meet in company with them, during all which time the work continues without interruption; and when the terms are finally agreed upon, as they have been in each year, without serious difficulty, we have found that they have been lived up to. And if any occasion of dispute arises, it has not caused the work to terminate, but it has been first settled locally if possible, and if occasion necessitated, has gone up to the chief council. That has worked satisfactorily for three years, and is a great improvement." Mr. D. J. Keefe, president of the Association, has commended the joint annual agreement system, saying, "We do not issue ultimatums, nor do we encourage the other fellow to do so. We take the position that, if we are not able to present sufficient arguments showing why our demands should be complied with, we are not entitled to the changes asked

for. We acknowledge the employer has a perfect right to present such argument as he deems in keeping with his side of the question, showing that the conditions will not admit of his complying with our demands. . . . Employers should treat with labor organizations as a collection of rational human beings, who recognize their labor as their capital, and who desire to sell the same to the best possible advantage." The 70,000 members of the Longshoremen's organization include every man whose work is directly or indirectly connected with the dock or water-front work. The local unions elect delegates to the annual conference with full power to bind the locals. From the 120 delegates a committee of five is selected to meet with the employers. In the light of the several days' discussion among the Longshoremen, the committee concludes an agreement which it simply reports to the delegates.

In the agreements cited thus far the provisions concerning arbitration or conciliation are a subsidiary part of the collective bargain. It is a step in advance when an agreement is made bearing almost if not quite wholly upon arbitration and conciliation. Such is the significant document which follows; it is an admirable working-out of the method of trade conciliation: —

This Agreement, made and entered into this twenty-fifth day of March, 1903, by and between the United Typothetæ of America and the International Printing Pressmen and Assistants Union, for the purpose of establishing between the employing printers of the United States and their pressmen and feeders uniform shop practices and fair scales of wages, settlement of all questions arising between them, and the abolition of strikes, sympathetic or otherwise, lockouts, and boycotts,

Witnesseth, That any question arising between a local Typothetæ or affiliated association of employers and their pressmen or feeders, in regard to wages or shop practices, shall be referred to the local Conference Committee, made up equally of representatives from the local Typothetæ and the local Union. Should this committee be unable to agree, or should one of the parties consider itself aggrieved by said committee's findings, either party to the conference may refer the question at issue to the National Conference Committee, which National Conference Committee shall act as hereinafter set forth.

Both local and National Conference Committees, in settling questions of shop practice, shall aim at the establishment of uniform shop practice throughout the United States and Canada. Unless special contracts to the contrary exist, any finding of the National Committee in regard to shop practice shall be binding upon local organizations.

A ruling upon a question of shop practice shall be made within three months after the presentation of such question to the Conference Committee of either side, and such ruling when once established by said committee shall not be reconsidered within two years.

Any change in the scale of wages shall be settled by conference or arbitration within four months after the first request for consideration, but shall not go into effect until one year after the first request for consideration; and no scale of wages shall be changed oftener than once in three years; provided, however, that all such scales of wages shall terminate with the expiration of this contract unless specifically agreed to the contrary.

All present contracts between the local Typothetæ or affiliated organizations of employers and their pressmen and feeders shall continue in force until their natural expiration.

A contract accepting a particular scale of wages does not include the acceptance of any rules in the union in regard to shop practice not specially mentioned in said contract.

The International Printing Pressmen and Assistants Union shall not engage in any strike, sympathetic or otherwise, or boycott, unless the employer fails to live up to this contract, it being understood that the employer fulfills all the terms of this contract by paying the scale of wages and living up to the shop practices as settled by the committee, regardless of his employees' union affiliations; no employer shall engage in any lockout unless the union or members thereof fail to live up to this contract; the conference or arbitration committee to be the final judge of what constitutes a failure to live up to this contract.

Pending investigation or arbitration, the men shall remain at work. The Conference Committee shall fix the time when any decision shall take effect, except the question of wages, which is heretofore provided for.

In the event of either party to the dispute refusing to accept and comply with the decision of the National Board of Arbitration, all aid and support to the firm or employer or local union so refusing acceptance and compliance shall be withdrawn by both parties to this agreement. The acts of such recalcitrant employer or union shall be publicly disavowed, and the aggrieved party to this agreement shall be furnished by the other with an official document to that effect.

In the event of a strike in a non-Typothetæ office, if it be proven to the local Conference Committee that such office is not complying with the shop rules and practices and scale of wages in accordance with the terms of this contract, no assistance shall be given to such office by Typothetæ members.

This agreement shall continue in full force and effect until May 1, 1907. It is expressly agreed that during the life of this contract fifty-four hours shall constitute a week's work. Notice of any desired changes in the contract must be given by either party to the contract at least three months prior to the expiration thereof.

Manner of arbitration: Each party to this contract shall

appoint two of its members who shall be known as its members of the National Board of Conference and Arbitration. These members may be changed at the will of the respective parties, except during the negotiation of any particular question, during which time the membership of such board shall continue the same. In case of the death of any member of such board during the consideration of a question, the place of such deceased member shall be filled by his party, and the entire proceeding shall thereupon begin again. This board shall meet upon a request of the president or presiding officer of either party at some point to be mutually agreed upon, within one month of such request, and shall take such evidence as it may consider bears upon the subject in hand. A majority of votes cast upon any question shall be binding upon both parties to this agreement. Should the vote upon any question result in a tie, this board shall select a fifth person to act as arbitrator, who shall for this particular question act as a member of such board, and the decision of such constituted board shall be binding upon the parties hereto.

The expenses of the members of the Conference Committee shall be borne by their respective parties. The common expenses of a conference shall be equally divided between the two parties.

The American Newspaper Publishers Association is one of the organizations of employers which follow the excellent plan of appointing a commissioner who conducts all their dealings with the trade-unions. Mr. Frederick Driscoll was appointed its commissioner early in 1900. In August he made a plea at the annual convention of the International Typographical Union for a joint arbitration agreement. A tentative scheme was drawn up to hold good for a year from May 1, 1901; it was endorsed unanimously by the Association and adopted by the Union, by a referen-

dum vote of 12,544 in favor and 3,530 opposed. The agreement provided that, in case any member of the Association should bind himself to arbitrate differences arising under his verbal or written contract with the Union, the International president would then guarantee the complete performance of the contract, and also that the local union would arbitrate all differences arising under it. A form of contract was prepared embodying the provisions of the agreement with the Association. In the first trial year the national board of arbitration decided but one case, in favor of the Union. The board was composed of the president of the Union and the Commissioner. They were to choose an umpire in case of disagreement. In January, 1902, a joint conference framed a new agreement, to run for five years from May 1, 1902, which includes all disputes as to new scales of wages and hours of labor. The board was thus made a wage and conciliation board. In 1902 it settled seven cases, six being new scales, and a great many cases were adjusted locally under the arbitration contract. When the Pressmen's Union concluded a similar agreement with the Publishers Association for the same period all the mechanical labor employed in newspaper offices was covered, as the union of typographers has jurisdiction over the stereotypers, mailers, and photo-engravers. After the establishment of the Association's industrial bureau there was not a strike in the office of a member to December 10, 1902. Mr. Driscoll then said: "I can most cheerfully testify to the honor and good faith which has characterized the International government in the multiplicity of business which we have transacted with them. . . . I have always found both

the International presidents ever ready to coöperate with me in adjusting differences and settling trouble when it first arises. . . . The facts as related show that any branch of manufacturing business can adopt a similar system to ours. Its practicability has been demonstrated and its adoption is cordially recommended. . . . The members of any branch of manufacturers, or other employers of organized labor, will make no mistake if they follow in the footsteps of the American Newspaper Publishers Association." [1] Considerable friction resulted in the summer of 1903 in the case of newspapers in Spokane and Seattle, but a new code of procedure was adopted and all difficulties were composed.

Another impressive instance of trade conciliation in the United States is the Chicago Board of Arbitration, made up of the heads of seven employers' associations and the heads of seven laborers' organizations, all connected with the business of teaming. Not only does this board settle every dispute in its own field; on account of the close connection of the teaming industry with other occupations, it has also been instrumental in preventing or ending strikes in a variety of other fields.

In Great Britain the system of trade conciliation has been very widely extended, and its success has been especially remarkable in the coal and iron and steel industries. The boards bear a variety of names,— "boards of conciliation," "boards of conciliation and arbitration," [2] "wages boards," "wages and disputes

[1] Address of Mr. Driscoll at the Industrial Conference of 1902, *Report*, pp. 293–300.

[2] The term "arbitration" is frequently misused in the names of

boards" — but their constitutions and their functions are very much alike. The oldest is the Board of Conciliation and Arbitration for the Manufactured Iron and Steel Trade of the North of England, dating from 1869. The Midland Iron and Steel Wages Board goes back to 1876; the Board of Conciliation and Arbitration for the Manufactured Steel Trade of the West of Scotland to 1890; the Board of Conciliation for the Ironfounding Industry of the North-East Coast to 1894; the Scottish Manufactured Iron Trade Conciliation and Arbitration Board to 1897; the South Wales Tin Plate and Steel Mill Workers Wages and Disputes Board to 1899. Other boards in the iron and steel industries are the board of conciliation established between the owners of blast furnaces in Scotland and the Scottish blast furnace men under the title of "The Board of Conciliation for the Regulation of Wages in the Pig-Iron Trade of Scotland," and the Board of Conciliation for the Pattern-making Industry of the North-East Coast.

In the coal industry the most important board is the Board of Conciliation for the Coal Trade of the Federated Districts (the Midlands, Yorkshire, and Lancashire). It represents a third of all the mines in the country. It originated in the strike of 1893; the formation of such a board was one of the terms of settlement, and general strikes have been unknown under it. Northumberland established a board in 1894 (terminated in 1896, reëstablished in 1900); Durham in 1895 (terminated in 1896; reëstablished

these boards, for the agreements which provide for it do not put it into the hands of the boards, but refer it to some external authority: the boards themselves are conciliation boards, and have no powers of arbitration conferred upon them.

in 1899); Scotland in 1900, and South Wales in 1903. Other industries having trade-boards in 1902 were building, quarrying, engineering, and ship-building, and other metal trades, the textile trades, boot and shoe making, the furnishing trades, tailoring, and transportation; fifty-five of these boards were reported to the Board of Trade as having settled cases in 1898–1902.

The first conciliation board of much consequence in England was the well-known Board of Arbitration and Conciliation, in the hosiery and glove trade of Nottingham.[1] This was due to the efforts of Mr. A. J.

[1] Mr. and Mrs. Webb (*Industrial Democracy*, p. 223, second note) criticise with substantial justice the names given to these earlier boards. "The student should note that there has been, until quite recently, no clear distinction drawn between collective bargaining, conciliation, and arbitration. Much of what is called arbitration or conciliation in the earlier writings on the subject amounts to nothing more than organized collective bargaining. Thus the classic work of Mr. Henry Crompton describes as 'conciliation' the typical cases in which representative employers and workmen meet to bargain on behalf of the trade. The Nottingham hosiery board, often described as a model of arbitration, was, in effect, nothing more than machinery for collective bargaining, no outsider being present, the casting vote being given up, and the decisions being arrived at by what the men called 'a long jaw.' In 1868 Mr. Mundella observed in a lecture, 'It is well to define what we mean by arbitration. The sense in which we use that word is that of an arrangement for open and friendly bargaining . . . in which masters and men meet together and talk over their common affairs openly and freely.' (*Arbitration as a Means of Preventing Strikes*, Bradford, 1868.)" At the same time it should be said that both Mr. Mundella and Mr. Crompton recognized the fundamental distinction between disputes relative to the past and those relative to the future. Mr. Mundella said: "If we had only to discuss quarrels that have arisen about the past state of prices, we should have almost nothing to do, because it is rarely that there is any dispute what shall be the rate this week, but the dispute is what shall be the rate next week." To the same effect Mr. Crompton writes of the distinction between two kinds of arbitration, "whether the dispute relates to past arrangements, as to what are the terms of an existing

Mundella, a manufacturer and afterwards member of Parliament. Mr. Henry Crompton's interesting account in his little book on "Industrial Conciliation" (1876) is familiar, but it cannot well be omitted here.

Mr. Mundella must be regarded as the inventor of systematic industrial conciliation. The first board was started in his own trade of hosiery in the year 1860. Prior to that time the history of the relations between employers and employed in the trade is that of war. If the worst aspects of this war — the terrible riots, the murders, arsons, and machine-breakings of the early part of the century — had disappeared, there was still hatred and suspicion by the operatives towards their masters, who, in their turn, entertained feelings of animosity against the men. Mr. Mundella admits that, "In times of depression a manufacturer pressed down the workmen as low as he possibly could, and the less conscience he had of course the more he pressed down the workmen; and when the time for an advance came, or better trade, although the natural demand for labour would sometimes force up wages a little, yet it was always resisted as much as possible. The men sent deputations from Trades-Unions round to the hosiers' warehouses. At one warehouse they would be told to walk down stairs, the masters would not acknowledge Trades-Unions. At another they would be told: 'Well, we shall wait till we see what our neighbours do.' After going round to the different firms and being received in that way, the chances are that the men would go home and strike, and it would depend on circumstances how long they could keep out. They would, perhaps, ask for more than was the natural rate, more than the trade could fairly give. It was simply starving out the manufacturer or the workmen till a compromise was effected."

contract, the just application of those terms to a new state of things, or whether the difficulty is to agree upon future prices or conditions of labor." "A board of conciliation deals with matters that could not be arbitrated upon." (*Industrial Conciliation*, pp. 16, 17.)

In 1860 there were three strikes in one branch of the trade, one of which lasted eleven weeks. The manufacturers met together to consider what they should do in their defence. A general lockout was proposed, but this meant the turning a large population into the streets. They shrank from such a step. Wisely and nobly they resolved to try a better alternative; after some consideration a handbill was issued, inviting a conference between masters and men to see if a peaceable issue might not be found to the dispute, which was one of wages. "Three of us," says Mr. Mundella, "met a dozen leaders of the Trades-Unions. We consulted with these men, and told them that the present plan was a bad one, that they took every advantage of us when we had a demand, and we took every advantage of them when trade was bad, and it was a system mutually predatory. Well, the men were very suspicious at first; indeed, it is impossible to describe to you how suspiciously we looked at each other. Some of the manufacturers also deprecated our proceedings, and said that we were degrading them. However, we had some ideas of our own, and we went on with them, and we sketched out what we called a 'Board of Arbitration and Conciliation.'" They agreed to refer all questions in dispute to the Board; that the Board should be composed of an equal number of manufacturers and workmen, both to be chosen annually by their respective bodies. "When we came to make our rules it was agreed that the chairman should be elected by the meeting, and should have a vote, a casting vote when necessary. I was chosen the chairman in the first instance, and I have been the chairman ever since. I have a casting vote, and twice that casting vote has got us into trouble, and for the last four years it has been resolved that we would not vote at all. Even when a workingman was convinced, or a master convinced, he did not like acting against his own order, and in some instances we had secessions in consequence of that; so we said, 'Do not let us vote again; let us try if we can agree.' And we did agree." Although the rules of the Board

still give the chairman a casting vote, it is never used. The chairman is always an employer, and it is thought undesirable that where there is an equal vote the decision should be given by an employer. The Board has consequently come to the determination that in such an event there shall be a reference to some arbitrator to be appointed for the occasion. There would be no objection on the part of the Board to a permanent referee, so long as he was acquainted with the trade; but there is a very strong feeling against a stranger referee, as the questions must depend to a great extent on the judgment formed of foreign goods, and the probable effect of foreign competition on the trade. The proceedings of the Board are very informal, not like a court, but the masters and men sit round a table, the men interspersed with the masters. Each side has its secretary. The proceedings are without ceremony, and the matter is settled by what the men call "a long jaw," — discussion and explanation of views, in which the men convince the masters as often as the masters the men. Of course this does not mean that every member of the Board is always convinced, though it seems that even this is very often the case, but when they are not they are content to compromise. They know the fatal consequences of disagreement. They agree by coming to the best arrangement possible under the circumstances. It is, in fact, conciliation, and is far better than the decision of a court or of an umpire. "The long jaw," ending in agreement, may take a longer time, but is the true practical way out of the difficulty.

The Nottingham board was followed in 1864 by a board established in the Wolverhampton building trades, and in 1868 by boards in the pottery trade, the Leicester hosiery trade, and the Nottingham lace trade (the only one of these earlier boards now surviving).

Professor Ashley's words on "our characteristically British and indirect way of doing a thing, without saying we are

doing it," apply to the various names given to these trade boards. However named, they are organized primarily for the conduct of collective bargaining (with or without a sliding scale attachment) ; secondarily, they are conciliating bodies, with full power to settle disputes. Only in case the committees or conferences cannot themselves agree, does the matter pass out of their hands into those of an arbitrator chosen from outside. In no proper sense of the term are they arbitrating bodies. Sometimes the board, called a "board of conciliation," declares in the heading of its rules that it is established "to determine the rate of wages," and in the rules themselves that this is its "object," and does not mention any functions or applications of conciliation proper (as in the cases of the Miners Federation, and the Northumberland board). Sometimes the "conciliation board" makes a comprehensive statement of its objects (as in the case of the Durham board) which includes conciliation and collective bargaining. "By conciliatory means to prevent disputes and to put an end to any that may arise, and with this view to consider and decide upon all claims that either party may from time to time make for a change in county rates of wages or county practices and upon any other questions, not falling within the jurisdiction of the Joint Committee, that it may be agreed between the parties to refer to the board." "All questions shall in the first instance be submitted to and considered by the board without the presence of the umpire, it being the desire and intention of the parties to settle by friendly conference, if possible, any differences or difficulties which may arise. If the board cannot agree, then the meeting shall be adjourned and the umpire shall be summoned to the adjourned meeting, when the matter shall be again discussed, and in default of an agreement by the board, the umpire shall give his casting vote on such matter. The decision of the board or the umpire shall be final and binding on the parties. . . . The Joint Committee shall have full power to refer to arbitration, or otherwise settle all questions (except such as may be termed

county questions, or which may affect the general trade) relating to wages, compensation for alteration in practices for working, and all questions or disputes of any other description, which may arise from time to time at any particular colliery, between the owner of such colliery and his workmen, and which shall be referred to the consideration of the committee by either of the parties concerned; and the decision of the committee shall be final and binding upon all parties." "In the event of any alteration in the manner or system of working, in accordance with county arrangements, no stoppage of work shall occur pending the decision, by agreement or arbitration (to be afterward confirmed by the Joint Committee), of any question as to readjustment of wage, or other question arising out of the altered mode of working. The decisions shall date from the commencement of such alteration. . . . In any case referred to arbitration each party shall appoint a disinterested arbitrator within twenty-one days of the date of the reference. . . . If, in any case referred to arbitration, the arbitrators fail to agree as to the appointment of an umpire, the Chairman of the Joint Committee shall make the selection of an umpire." (Durham Rules.)

The Board of Conciliation for the coal trade of Monmouthshire and South Wales was established in 1903 "to determine the general rate of wages to be paid to the workmen and to deal with disputes at the various collieries of the owners. . . . The parties to this agreement pledge their respective constituents to make every effort possible to avoid difficulties or disputes at the collieries, and in case of any unavoidable difference, the owners or their officials, together with their workmen or their agent or agents, shall endeavor to settle all matters at the collieries, and only in case of failing to effect a settlement shall a written appeal be made to the board by either or both of the parties concerned in the dispute to consider the same; and no notice to terminate contracts shall be given by either owners or their workmen before the particular question in dispute shall

have been considered by the board, and it shall have failed to arrive at an agreement."

The objects of the Scottish Manufactured Iron Trade Conciliation and Arbitration Board are "to discuss, and if necessary to arbitrate, on wages or any other matters affecting the respective interests of the employers or operatives, and by conciliatory means to interpose its influence to avert stoppages, prevent disputes, and put an end to any that may arise." The Board of Conciliation and Arbitration for the Manufactured Steel Trade of the West of Scotland uses almost the same words in stating its object.

The usual functions of these boards plainly appear in the Rules and Instructions of the Midland Iron and Steel Wages Board, revised and adopted in 1894; I give these in full as representing the best practice of the boards.

1. The title of the board shall be "The Midland Iron and Steel Wages Board."

2. The objects of the board shall be to discuss, and, if necessary, to arbitrate on wages or any other matters affecting the respective interests of the employers or operatives, and by conciliatory means to interpose its influence to prevent disputes and put an end to any that may arise.

3. The president shall be a person of position not connected with the iron trade, chosen by the board, whose duty it shall be to attend at special meetings, upon being requested by the board to do so. He shall take no part in the discussions, beyond asking for an explanation for the guidance of his own judgment, and if no settlement can be made, he shall give his adjudication.

4. The board shall consist of one employer and one operative representative from each works joining the board. Where two or more works belong to the same proprietors, each works may claim to be represented on the board.

5. The employers shall be entitled to send one duly ac-

credited representative from each works to each meeting of the board.

6. The operatives of each works shall elect a representative by ballot, at a meeting to be held for the purpose, on such day or days as the standing committee may fix, in the month of December in each year, the name of such representative, and of the works he represents, being given in to the secretaries, on or before January 1 next ensuing.

The secretaries shall, in the month of November in each year, issue a notice to each works connected with the board, requesting the election of representatives in the month of December, and shall supply the requisite forms.

7. If any operative representative die, or resign, or cease to be qualified by terminating his connection with the works he represents, a successor shall be chosen within one month, in the same manner as is provided in the case of annual elections.

8. The operatives' representatives so chosen shall continue in office for the calendar year immediately following their election, and shall be eligible for reëlection.

9. Each representative shall be deemed fully authorized to act for the works which he represents, and the decision of a majority of the board — or in case of equality of votes, of its chairman — shall be binding upon the employers and operatives of all works connected with the board.

10. The chairman shall be appointed by the employers' section from among their body. The vice-chairman shall be appointed by the operatives' section from among their body. A secretary shall be appointed by the employers, and a secretary shall be appointed by the operatives, and a treasurer and a professional auditor shall be appointed by the board. Either of the secretaries, the treasurer, or the auditor may be dismissed by a resolution of the respective bodies appointing them, subject to three months' notice.

11. The board shall meet for the transaction of business in February of each year; but, by order of the standing committee, the secretaries shall convene a meeting of the

board at any time. The circular calling such meeting shall express, in general terms, the nature of the business for consideration.

12. At the annual meeting of the board a standing committee shall be appointed as follows : — The employers shall nominate 12 of their number, exclusive of the chairman ; and the operatives 12 of their number, exclusive of the vice-chairman.

If at a meeting of the board or standing committee any employers' representative, or any operatives' representative, be absent, the employers' secretary, or the operatives' secretary, shall vote for such absent member or members as the case may be.

The standing committee shall have power to fill up all vacancies in their own committee that may arise during the year.

13. The standing committee shall meet for the transaction of business prior to the yearly meeting, and in addition as often as business requires. The time and place of meeting shall be arranged by the secretaries in default of any special direction.

14. The chairman shall preside over all meetings of the board, and of the standing committee, except in cases that require the president. In the absence of the chairman, a temporary chairman shall be elected by the meeting.

15. All questions requiring investigation shall be submitted to the standing committee, or to the board, as the case may be, in writing, and shall be supplemented by such verbal evidence or explanation as they may think needful.

An official form shall be supplied to each representative on which complaints can be entered. Either secretary receiving a complaint shall be required to forward a copy of the same to the other secretary, and the complaint shall be considered as officially before the board from the date of such notice.

16. All questions shall, in the first instance, be referred

to the standing committee, who shall investigate and have power to settle all matters so referred to it, except a general rise or fall of wages, or the selection of a president, which shall be referred to a special meeting of the full board. In case the standing committee fails to agree, the question in dispute shall be submitted to the full board, and if not decided by the board, shall then be submitted to the president; but in all cases witnesses from the works affected may be summoned to attend and give evidence before the president in support of their case.

17. No case which the standing committee is called upon to deal with, or subject of dispute, shall be brought forward at any meeting unless notice thereof has been given to the secretaries seven clear days before such meeting; but this is not to apply to routine business or to matters the investigation of which may be considered necessary by the standing committee.

18. All votes shall be taken at the board and standing committee by show of hands, unless any member calls for a ballot.

19. When the question is a general rise or fall of wages, a board meeting shall be held, and in case no agreement can be arrived at, it shall be referred to the president, and his decision shall be final and binding on all parties.

20. The expenses incurred by the board shall be borne equally by the employers and operatives.

The two secretaries shall arrange for the collection of the contributions quarter by quarter, on June 30, September 30, December 31, and March 31, which shall be forthwith remitted to the treasurer through the works' offices, and it is expected that the employers will allow their pay clerks to assist the operatives' representative in making the collection, upon being furnished with a list of those desiring to contribute.

The employers' contribution shall be at the rate of one shilling sixpence per quarter for each puddling, ball, and scrap furnace, three shillings for each mill, heating, and an-

nealing furnace, and ten shillings for each open-hearth steel furnace, or converter, per quarter.

The operatives' contributions per quarter shall be — for all puddlers (including level hands), shinglers, rollers, heaters, steel workers, and all other tonnage men, fourpence per man. Also all time men (including puddlers' underhands) receiving three shillings and sixpence and *over* per day, a contribution of fourpence per quarter; and all time men receiving *under* three shillings and sixpence per day, twopence per quarter.

The banking account of the board shall be kept in the name of the treasurer, and all accounts shall be paid by cheques signed by him.

21. The sum of ten shillings shall be paid to each member of the board, both employers and operatives, for each day's attendance, and second-class railway fare both ways.

22. The operatives' representative shall be paid for time necessarily lost in attending to difficulties at the works to which he belongs, upon a certificate signed by the vice-chairman and the operatives' secretary, at the rate of 10s. for each shift so lost.

23. Should it be proved to the satisfaction of the standing committee that any member of the board has used his influence in endeavouring to prevent the decisions of the board or standing committee from being carried out, he shall forthwith cease to be a representative, and shall be liable to forfeit any fees which might otherwise be due to him from the board.

24. If the employers and operatives at any works not connected with the board should desire to join the same, such desire shall be notified to the secretaries, and by them to the standing committee, who shall have power to admit them to membership on being satisfied that these rules have been or are about to be complied with.

25. No alteration or addition shall be made to these rules except at the meeting of the board to be held in February in each year, and unless notice, in writing, of the proposed

alteration be given to the secretaries at least one calendar month before such meeting. The notice convening the annual meeting shall state fully the nature of any alteration that may be proposed.

26. The standing committee shall have power to make, from time to time, such by-laws as they may consider necessary, provided the same are not inconsistent with or at variance with these rules.

27. No suspension of work shall take place pending the decisions of the board or of the president.

INSTRUCTIONS

The board earnestly invites the attention of all who belong to it to the following instructions: —

1. If any subscriber to the board desires to have its assistance in redressing any grievance he must explain the matter to the operatives' representative of the works at which he is employed. Before doing so he must, however, have done his best to get his grievance righted by seeing his foreman, or the manager, himself.

2. The operatives' representative must question the complainant about the matter, and discourage complaints which do not appear to be well founded. Before taking action he must ascertain that the previous instruction has been complied with.

3. If there seem to be good grounds for complaint, the complainant and the operatives' representative must take a suitable opportunity of laying the matter before the foreman or works manager, or head of the concern (according to what may be the custom of the particular works). Except in case of emergency, these complaints shall be made only upon one day each week, the said day and time being fixed by the manager of the works.

4. The complaint should be stated in a way that implies an expectation that it will be fairly and fully considered, and that what is right will be done. In most cases this

will lead to a settlement without the matter having to go further.

5. If, however, an agreement cannot be come to, a statement of the points in difference shall be drawn out, signed by the employers' representative and the operatives' representative, and forwarded to the secretaries of the board with a request that the standing committee will consider the matter. An official form, on which complaints may be stated, can be obtained from the secretaries.

6. It will be the duty of the standing committee to meet for this purpose as soon after the expiration of seven days from receipt of the notice as can be arranged, but not later than the first Thursday in each month.

7. It is not, however, always possible to avoid some delay, and the complainant must not suppose that he will necessarily lose anything by having to wait, as any recommendation of the standing committee, or any decision of the board, may be made to date back to the time of the complaint being sent in.

8. Above all, the board would impress upon its subscribers *that there must be no strike or suspension of work.* The main object of the board is to prevent anything of this sort; and, if any strike or suspension of work take place, the board will refuse to inquire into the matter in dispute till work is resumed, and the fact of its having been interrupted will be taken into account in considering the question.

9. It is recommended that any changes in the modes of working requiring alterations in the hours of labour, or a revision of the scale of payments, shall be made matter of notice, as far as possible, and of arrangement beforehand, so as to avoid needless subsequent disputes as to what ought to be paid.

The success of trade conciliation in Great Britain has been notable. At the thirty-fourth annual meeting of the Board of Conciliation and Arbitration for

the Manufactured Iron and Steel Trade of the North of England, the standing committee closed its report by saying, "The employer and operative members of the board may well take a legitimate pride in the influence exercised by their organization in the direction of industrial peace and the avoidance of strikes, so disastrous to the general trade of the country. It may confidently be asserted that the principles of conciliation and arbitration represented by this board are finding more general acceptance in every branch of industry; and your standing committee feel they are therefore warranted in the belief that with a more extended knowledge of these principles and methods, industrial warfare will speedily cease its destroying and retrograde influence upon all sections of trade.

"The principles and methods" of this very effective system have appeared in the rules of the Midland Board as just given above. Equality of representation of employer and employed, the choice of a man of high standing as umpire (if one is chosen at all), the complete authority of these representatives to bind their principals, the employment of small sub-committees to handle business in its early stages, the exhaustion of minor methods of conciliation before recourse is had to the committee or the board, the payment for attendance, the consideration and respect paid to each side by the other in the meetings — these are features of no small importance. But above all, as the Midland Board rightly says, is the condition that "*there must be no strike or suspension of work.* The main object of the board is to prevent anything of this sort; and, if any strike or suspension of work takes place, the board will refuse to inquire into the matter in dispute

until work is resumed, and the fact of its having been interrupted will be taken into account in considering the question." The board knows well the value of the ounce of prevention, and it will not stultify itself by allowing any substitute.[1]

[1] On trade conciliation in England see Dr. von Schulze-Gävernitz, *Zum Socialen Frieden* (Leipzig, 1890), English translation, *Social Peace* (1893); the valuable report of Mr. J. B. M'Pherson in the *Bulletin of the Department of Labor*, No. 28, May, 1900; J. S. Jeans, *Conciliation and Arbitration in Labor Disputes*, chaps. iv.–vi., xii.–xiv. (1894); Professor W. J. Ashley's *Adjustment of Wages*, and the *Report of the Industrial Commission*, vol. xvii. pp. 464–507. A great variety of documents will be found in the last four authorities. For the United States see the *Report* just cited, pp. 325–422; *Bulletin No. 8 of the Department of Labor*, January, 1897 (the boot and shoe industry). The report on *Industrial Conciliation and Arbitration*, compiled by direction of the Massachusetts Legislature in 1881, by Carroll D. Wright, includes Mr. Joseph D. Weeks' valuable report of 1878 on English conditions. Mr. Weeks was long the foremost authority in this country on arbitration and conciliation. Dr. R. Spence Watson, from ample experience, explained the working of the English Boards in the *Contemporary Review* for May, 1890.

CHAPTER XII

STATE BOARDS OF CONCILIATION AND ARBITRATION IN THE UNITED STATES

THE first State boards of arbitration in America were established by New York and Massachusetts in 1886. Other States legislating in this direction have followed the example of one or the other of these two. Largely owing, no doubt, to unusual permanence of tenure by the members and to the great favor which public opinion in this enlightened State has shown in general to intervention by commission, the Massachusetts board has made the best record among such bodies, that of New York coming next in efficiency.[1] What Massachusetts has accomplished and has failed to do deserves attention.

The Massachusetts law on arbitration, until the end of 1901, was chapter 263 of the Acts of 1886, approved June 2, entitled "An Act to provide for a State Board of Arbitration for the settlement of differences between employers and their employees," and amended in 1887 (on the lines of the New York statute), in 1888, 1890, and 1892; the amendments relate chiefly to the employment of expert assistants. A consolidation and revision of statutes went into effect December 31, 1901, and chapter 446 of the

[1] The New York Board's annual reports have been valuable because of their vigorous treatment of strikes on railways and the literature on arbitration which they have printed.

Statutes of 1902 made a further amendment. (I quote the language of the earlier acts, where the codification has not changed the substance.)

"Three competent persons" are to serve "as a State Board of Arbitration and Conciliation:" one of these shall be "an employer, or selected from some association representing employers of labor;" one "shall be selected from some labor organization, and not an employer of labor; the third shall be appointed upon the recommendation of the other two:" if they cannot agree, the third man is to be appointed by the Governor. The term of office is three years, the terms being so arranged that one member retires each year. The governor appoints to vacancies and can remove for cause. The compensation of each member is $2000 a year; travelling and other expenses are paid by the Commonwealth. The board chooses its own chairman and appoints a clerk with a salary of $1,200.

"Whenever any controversy or difference not involving questions which may be the subject of a suit at law or bill in equity, exists between an employer, whether an individual, copartnership, or corporation, and his employees, if at the time he employs not less than twenty-five persons in the same general line of business in any city or town in this Commonwealth, the board shall, upon application . . . and as soon as practicable thereafter, visit the locality of the dispute and make careful inquiry into the cause thereof, hear all persons interested therein who may come before them, advise the respective parties what, if anything, ought to be done or submitted to by either or both to adjust said dispute, and make a written decision thereof. This decision shall at once be made public . . . and a short statement thereof published in the annual report.

"Said application shall be signed by said employer or by a majority of his employees in the department of the business in which the controversy or difference exists, or their duly authorized agent, or by both parties, and shall contain

a concise statement of the grievances complained of, and a promise to continue on in business or at work without any lockout or strike until the decision of said board, if it shall be made within three weeks of the date of filing said application. When an application is signed by an agent claiming to represent a majority of such employees, the board shall satisfy itself that such agent is duly authorized in writing to represent such employees, but the names of the employees giving such authority shall be kept secret by said board. As soon as may be after the receipt of said application the secretary of said board shall cause . . . notice to be given of the time and place for the hearing thereon.

"When notice has been given . . . each of the parties to the controversy, the employer on the one side, and the employees interested on the other side, may in writing nominate, and the board shall appoint, one person to act in the case as expert assistant to the board. The two persons so appointed shall be skilled in and conversant with the business or trade concerning which the dispute has arisen. It shall be their duty, under the direction of the board, to obtain and report to the board information concerning the wages paid and the methods and grades of work prevailing in manufacturing establishments within the Commonwealth of a character similar to that in which the matters in dispute have arisen."

If the promise to continue in business or at work is not kept by either petitioner, "the board shall proceed no further thereupon without the written consent of the adverse party. . . . The board shall have power to summon as witnesses any operative in the departments of business affected and any person who keeps the records of wages earned in those departments, and to examine them under oath, and to require the production of books containing the record of wages paid. Summonses may be signed and oaths administered by any member of the board. The decision of the board shall be binding upon the parties who join in

said application for six months, or until either party has given the other notice in writing of his intention not to be bound by the same at the expiration of sixty days therefrom. Said notice may be given to said employees by posting the same in three conspicuous places in the shop or factory where they work.

"The parties to any controversy or difference . . . may submit the matters in dispute, in writing, to a local board of arbitration and conciliation; such board may either be mutually agreed upon, or the employer may designate one of the arbitrators, the employees or their duly authorized agent another, and the two arbitrators so designated may choose a third, who shall be chairman of the board. Such board shall, in respect to the matters referred to it, have and exercise all the powers which the State board might have and exercise, and its decision shall have whatever binding effect may be agreed by the parties to the controversy in the written submission. The jurisdiction of such board shall be exclusive in respect to the matters submitted to it, but it may ask and receive the advice and assistance of the State board.

"Whenever it is made to appear to the mayor of a city or the board of selectmen of a town that a strike or lockout . . . is seriously threatened or actually occurs, the mayor of such city or board of selectmen of such town shall at once notify the State board of the facts. Whenever it shall come to the knowledge of the State board, either by notice from the mayor of a city or the board of selectmen of a town, . . . or otherwise, that a strike or lockout is seriously threatened or has actually occurred in any city or town of the Commonwealth, involving an employer and his present or past employees, if at the time he is employing, or up to the occurrence of the strike or lockout was employing, not less than twenty-five persons in the same general line of business in any city or town in the Commonwealth, it shall be the duty of the State board to put itself in communication as soon as may be with such employer and employees, and

endeavor by mediation to effect an amicable settlement between them, or to endeavor to persuade them, provided that a strike or lockout has not actually occurred or is not then continuing, to submit the matters in dispute to a local board of arbitration and conciliation, as above provided, or to the State board ; and said State board shall investigate the cause or causes of such controversy, and ascertain which party thereto is mainly responsible or blameworthy for the existence or continuance of the same, and may make and publish a report finding such cause or causes, and assigning such responsibility or blame." [1]

Through the simple phraseology of this Massachusetts statute the intention of the law-makers plainly appears. The familiar features of voluntary arbitration and conciliation boards stand forth. One member of the Board represents "labor," a second "capital," and a third "the public." If the Board hears of trouble anywhere in the industries of the Commonwealth between employers and employees, it does not wait for either party to apply for its good offices, but comes into immediate communication with the parties of its own accord, and offers its services or suggests a voluntary board of conciliation. On the other hand, in case either party (or both parties) anticipates the action of the Board by an application for its intervention, the Board is ready to comply, as a conciliating body. Its decision is binding upon the two parties only in case both have joined in the application, and it will be observed that there is no penalty clause providing for a failure, by either party, to carry out the decision.

[1] In the Revised Laws of 1901, "conciliation" comes first (not last, as in the original act) under "duties and powers." This is a natural result of the experience under the act, which has shown that conciliation is a much more important function for the Board than arbitration.

The Board may *arbitrate* only when both parties so apply; it is directed to *mediate* by proffering its services; and it must, in the interests of the public, investigate if its mediation is declined; but it has no power to enforce its decision upon either party if unwilling. It is not strange, then, that the reports of its activity show a large preponderance of conciliations over arbitrations. The provisions for local boards are good, but they are not often availed of. The provision for expert assistants, chosen by the parties or by the Board, is one of the best features of the law, and commends itself at once. A decision worthy to command respect could hardly be expected, in an industry with numerous complicated processes and very many products, from a board not so assisted.[1]

Massachusetts thus goes so far as to establish a permanent board of disinterested persons, always ready to conciliate or arbitrate, and empowered to investigate in any event, and to publish its impartial opinion to the world. The successive governors of the State have had the good sense to continue the various members in office for years. Neither party to a dispute can force the other to appear before the Board and to abide by its decision; neither public opinion nor the government of the State coerces one or another unwilling party, or both parties, any further than to subject them to an investigation which the Board has large

[1] An Illinois coal commissioner thus speaks of the system: "Unless under State arbitration the decrees of the board can be enforced, they are practically of no value. They are not respected as arbitration is respected where it has been rendered by individuals who are unofficial, who do not act in any official capacity, but who understand the industry involved and its conditions. Take, for example, the State of Illinois. During the past year (1900) there has not been a single case referred to the State Board of Arbitration."

powers to make. When the Board investigates on its own initiative, public opinion is the only force it can invoke to carry out its decision; and public opinion will be more or less effective in proportion to the simplicity of the issue.

The Board has published an annual report, as by law required, but a good-natured critic might suggest that these reports are easily capable of improvement. Each has contained some eighty or ninety pages reproducing the laws on arbitration of the United States and of the various Commonwealths which have taken any action on the subject, with a page or two of preface. Notices of cases coming under the survey of the Board occupy the bulk of each volume: these notices vary in length from one page or less to twenty or thirty pages in some exceptional instances; three or four pages of preface introduce them. Not until 1900 did the Board furnish any tabulation or classification of these cases, and even the later reports leave much to be desired in this direction. On important points, such as the proportion which the number of cases of strikes or difficulties referred to the Board or decided by it bears to the whole number of strikes occurring in the State in the year, the reader gets no assistance. There is no summary, in the report for 1902, for instance, of the 193 cases named in the table of contents, to show how many were individually acted upon, how many were combined cases (of brewers, shoe manufacturers, or textile companies in the same city, say), or how many notices simply give interpretations by the Board of joint agreements which provide that all disputes happening under them shall be referred to the State Board for decision. The volumes are thus

scarcely more than raw material for the student of labor matters, and he must do his own classifying and summarizing. Selected matter on various phases of arbitration might profitably supplant the regular reprint of the same State laws year after year.

Dr. Durand, in volume xvii. of the "Report of the United States Industrial Commission" (p. 443), has given this summary of the work of the Massachusetts Board from 1894 to 1900 inclusive:[1] —

	Total number of cases.	Cases arbitrated.	Cases mediated:		Joint applications by parties.	Application by one party.	Action by initiative of board.	Public hearings held.	Wages involved.
			Successful.	Unsuccessful.					
1894.....	37	10	8	19	11	7	19		$6,054,900
1895.....	32	10	10	12	11	6	15	3	1,704,666
1896.....	30	12	6	12	12	4	14	1	1,216,300
1897.....	36	14	7	15	14	8	14	1	1,036,360
1898.....	22	5	3	14	5	4	13	1	4,227,590
1899.....	26	1	11	14	2	5	19		
1900.....	49	2	27	20	6	14	34		
Total.....	232	54	72	106	61	48	128	6	

Comparison of a report of the Board with figures showing the whole number of strikes and lockouts occurring in any year since its formation is not enlightening as to the value of the Board's service. If we take the year 1900 as a fair specimen, we find

[1] The Board includes in the total number of cases every case brought to its attention, although action on its own part may be anticipated by the parties themselves or otherwise. The efficiency of the Board is of course exaggerated in this way. Again, as Dr. Durand says, "The statements made in certain cases are not sufficiently specific so that it is possible to determine with absolute certainty what was accomplished by the intervention of the Board, or to answer categorically some of the other questions which arise as to the procedure."

from the Sixteenth Annual Report of the United States Commissioner of Labor that there were in Massachusetts 77 strikes (the same number as in 1899), involving 510 establishments, and 11,874 strikers; 16,208 persons were thrown out of employment by the strikes: the wage loss to the workers was $589,615, and the loss to the employers was $530,000. There were two lockouts affecting two establishments which had 1,535 employees: 150 employees were locked out and 340 were thrown out of employment by the lockouts. In the same year, the Board reports 54 cases of intervention by it in labor troubles: how far these cases coincided with the 79 strikes and lockouts reported from Washington there is no means of determining. Two cases of arbitration were reported by the Board, and 27 cases of conciliation, making 54 per cent. of success in its work.

In the absence of data giving the exact proportions of the figures from Boston to those from Washington, one is led to fall back on other means of judging the work of the Board. The Board appears to be held in general, but not in extreme, respect for its good intentions by the people of the State who know of its work; public opinion of its fairness and its industry is favorable, but one cannot say that the Board compares favorably with the Railroad Commission, which has had such great success, or that it plays a prominent part before the public when a strike is on. Its lack of power to arrest the strike, or to arbitrate with compulsory power, of course reduces the members to the station of friendly advisers, clothed with a small amount of official dignity. The reception they meet from employers or employees varies according to the

politeness possessed by these latter, and the treatment ranges from positive discourtesy to amiability.

The Board does not report the cases in which its initiative, or its recommendation in the way of conciliation, has been rejected by either party, or by both. Dr. Durand's table gives 72 successful cases of attempted conciliation against 106 unsuccessful cases, — 178 in 7 years. But by making allowance for settlements by the parties themselves, and for other qualifying factors, the number of the so-called "failures" would be considerably reduced. The proportions of failure and success vary from year to year; in 1900 there were 27 successes against 20 failures. Dr. Durand's conclusion on the total activity of the Board (1894–1900) is this: "Including together the cases which the Board has settled by means of arbitration and those in which its mediation has hastened or effected a settlement, it will be found that in more than half of the total number of cases brought to its attention the efforts of the Board have been successful, in greater or less degree, while, if we should eliminate those cases in which the Board found itself at the outset precluded from taking any action whatever, the proportion of successful instances would be considerably higher." The number of cases reported in 1901 (108) was more than twice as large as for 1900, and nearly twice as large for 1902 (193 cases) as for 1901. Allowance should be made increasingly, as the years go by, for the number of references to the Board under joint agreements, — many of these references being of minor matters which would hardly have caused strikes, if not so referred. One shoe corporation in Brockton, for instance, made nine such references in

1902. This is good work for industrial peace, but it does not mean as much as if nine different establishments had applied to the Board in one year. It is nevertheless apparent that the habit of resort to the Board is slowly increasing in the State, and the Board possibly commands more respect as time goes on. It has been industrious and tactful, while not distinguished in its personnel; its membership could hardly be compared with that of the Railroad Commission.

The average annual number of cases reported by the Board from 1894 to 1902, inclusive, was 33; the largest number (193) was in 1902; the smallest number (22) in 1898; the total for the nine years is 533 cases. The average number of cases of arbitration proper, in which both parties joined in the application, and agreed to accept the decision, has been small, absolutely and proportionally, — about 8 a year; the number has varied from 1 to 14, and has not shown any notable tendency to increase in the more recent years, there being 9 cases in 1901, and the same in 1902. Employees have refused but once in the history of the Board to accept the arbitration award, and the employers have in no case so refused. Employers have declined to agree to arbitration in 7 cases at least where the employees proposed it, while the reverse has been true in 4 cases.[1]

The Board usually expresses in its annual reports a sense of the high value of its labors, and it notes an

[1] Only in its report for 1902 does the Board emphasize sufficiently the importance of collective bargaining, as distinguished from arbitration; in the above 11 cases the distinction may have been more or less clear to one of the two parties as a ground for refusing arbitration.

"increasing tendency to arbitrate differences rather than strike," shown especially in 1902 by its being called upon "to render decision in more than twice as many cases as in the previous year." In previous years the Board, despite its general optimistic tone, had frequently lamented the slowness of employers and workingmen to realize the value of conciliation and arbitration, as proffered by the State.

The New York State Board of Mediation and Arbitration has had an amount of success which ranks it next to that of Massachusetts. After the full account given of the latter Board, it will suffice to note some points of difference between the two. A feature of the New York law not to be commended was that one member of the Board should belong to one of the two great political parties, and another to the other party. This bi-partisan rule is a poor substitute for non-partisanship in labor matters; in the government of cities it has been a proved failure. The third member was to be a member of an "incorporated" labor organization. There was thus no explicit provision made for the representation of the employing class, but probably it was always intended that one of the other members should be an employer. Both parties to a labor dispute must agree to submit to arbitration for the Board to render an authoritative decision. There are no provisions looking toward an enforcement of such decisions. The Board can mediate in a strike or lockout by offering its services. Each of its annual reports contains brief statements of cases in which the Board has been active, and the laws of the various States concerning arbitration and conciliation. The Board has given, at various times, fuller reports,

with the testimony, of important cases, such as the trolley line strikes in Brooklyn and Albany. The great strike on the New York Central Railroad in 1890 was the subject of a special report. The volumes have also included, from time to time, important documents relating to arbitration, like the laws of New Zealand and New South Wales. In this way the New York Board has done more to enlighten public opinion on the existing condition of the arbitration movement than any other. In 1901 the Board of Mediation and Arbitration was legislated out of existence, and all its powers and duties were given to the Commissioner of Labor, with his first and second deputies. The reason given for this change was the economy of consolidation.

The following table, showing the work of the Board for 1894–1900, is taken from volume xvii. of the "Report of the Industrial Commission," page 450:—

	1894	1895	1896	1897	1898	1899	1900	Total.
Total cases of intervention	20	25	18	26	21	29	18	157
Arbitration by agreement of parties	2	1	–	–	2	–	–	5
Public hearings and reports	1	4	3	3	–	6	1	18
Failure to settle by same	1	2	2	1	–	2	–	8
Successful mediation	9	10	7	14	10	12	14	76
Unsuccessful mediation	6	9	7	8	6	11	3	50
Local arbitration	2	1	1	1	3	–	–	8

The New York Board failed to give statistical summaries of its work, and the above table was compiled by the experts of the Industrial Commission. They note that cases in which there has been formal arbitration in pursuance of a joint application of the parties for the settlement of their dispute, are exceedingly rare; only two or three, even, of the five cases noted in the table were cases of actual joint application.

The Board held a considerable number (18) of public hearings in these seven years. They were held in cases of important and prolonged disputes in which the mediation of the Board failed of acceptance, and in nearly half of these cases no adjustment was brought about. The Board emphasized the point that its most important office is that of conciliation. It reported 126 cases of mediation in 1894–1900, of which 76 resulted successfully and 50 unsuccessfully. The Board generally took the initiative, and it lamented the fact that the law did not give it powers for obtaining information concerning strikes like those of the Massachusetts Board. The Board held optimistic views of its work. But the figures given above, of the cases of intervention and of mediation, do not bear out confident claims of success. The increase in the number of cases is comparatively slight, from the beginning of the work of the Board to the year 1900, but doubtless the Board accomplished no small amount of good in the direction of conciliation.

The chief features in which the New York law differs from that of Massachusetts have been copied by New Jersey, Michigan, and Connecticut. The Massachusetts law has been more closely followed by California, Colorado, Idaho, Illinois, Louisiana, Montana, Minnesota, Ohio, Utah, and Winconsin; but of all these States only Ohio, Illinois, and Wisconsin have acccomplished results worth mentioning.[1] Indiana has a board of a peculiar construction. Its Labor Com-

[1] One of the weaknesses of the majority of State boards of arbitration, outside of New York and Massachusetts, is the payment of the members by the day, instead of by a salary. A casual compensation of five or seven dollars a day, and expenses, is not likely to attract men of decided ability to the service.

mission consists of one person who has been "for not less than ten years of his life an employee, for wages," and another who has been "for not less than ten years an employer of labor for wages;" they must belong to different political parties. When they act as a board of arbitration, there is associated with them a judge of the Circuit Court of the county in which the controversy has arisen. If the parties so desire, the employer in the dispute may choose one additional member of the board and the employees another, the judge being the presiding member. Arbitration proper takes place only where both parties apply for it. The circuit judge may compel the attendance of witnesses, as if he were sitting in a regular court. The decision of the arbitrators is binding, and no limit is fixed for its duration. Any person who was a party to the proceedings may petition the Circuit Court to enforce compliance with the award, if necessary, and the court will issue orders to give effect to the decision. Disobedience is considered contempt of court, but the punishment is not to include imprisonment, except in extreme cases. It is the duty of the Labor Commission to put itself into immediate communication with the parties to any strike or dispute affecting fifty or more persons. If it does not succeed in five days in bringing about an adjustment or a submission of the case to arbitration, it must go on to investigate the facts and cause of the trouble. It must report the result of its investigation to the governor, who is authorized to publish the report at once. Since 1897 — when it began work — the Indiana Labor Commission has been quite an active body. Arbitration cases are rare, as in other States. Conciliation rather than

arbitration is, in the opinion of the Commission, a more effective and satisfactory method of settling disputes. It says that the parties interested are averse to submit questions involving the correctness of their industrial methods and the welfare of their business interests to the judgment of the most impartial persons who have only a rudimentary knowledge of the intricate matters which labor controversies often involve. But results are different where efforts at conciliation are concerned.

Beyond the States whose boards of arbitration have been thus briefly discussed, very little has been accomplished in America through such instrumentalities. A number of States have passed laws providing for boards of arbitration which have never even been organized. The California statute, for example, goes back to 1891. A board was appointed under the act, but it has not held a meeting. In Connecticut the law of 1894 has been so interpreted by the courts that all important powers are taken from the board, and consequently there has been no practical use made of the provisions of the law. Several States, like Iowa and Texas, provide simply for the institution of local boards of conciliation and arbitration. There has been a great lack of results under these laws. In New Jersey, according to the Industrial Commission, the reports of the State Board of Arbitration contain long lists of strikes for 1895–1899, with the simple statement in addition that the board always offered its services as mediator or arbitrator, but almost invariably the employer or the employees refused to accept them.

From this review of the work of the State boards of arbitration in this country and of the arbitration legis-

lation in general, it will appear that, while four or five States at the utmost have accomplished results entitled to respect in various degrees, the system has not by any means approved itself as fully capable of coping with the industrial difficulties of the time. Even in the two States where the boards have commanded most respect, their total activities have been slight by the side of the great number of labor troubles which they have not affected to any considerable extent. In Massachusetts there has been no strike in recent years attended with any notable amount of violence, sufficient to necessitate the calling out of the State militia. But the large strikes of the textile workers of Lowell and Fall River and of the teamsters in Boston were too formidable for the State Board to settle. There seems to be no marked disposition on the part of the trade-unions of Massachusetts to call in the Board, while doubtless public opinion is more favorable there to this method than in any other State. It is an impressive comment, however, on the eighteen years' work of the Massachusetts Board that nowhere else in America is there more of a demand for some measure of "compulsory arbitration." The final word about the plan of State boards of arbitration, shown at its best in Massachusetts, must be that the boards do good work as far as they go; if they were better paid, made up of abler men, and entirely free from politics, they might do much more. But on the whole they are not taken seriously by the public or by disputants. Where they have accomplished the most, their accomplishment seems slight by the side of what is desirable in the way of preventing or settling serious labor troubles.

CHAPTER XIII

LEGAL REGULATION OF LABOR DISPUTES IN MONOPOLISTIC INDUSTRIES

THE general opposition in this country to legal regulation of labor disputes has been much weakened as regards two important fields. In the last fifteen years a decided opinion in favor of some measure of so-called "compulsory arbitration" for the settlement of strikes on transportation lines has been expressed by several State boards of arbitration (usually emphatic against such "arbitration") and by other authorities, and in the last five years there has been considerable discussion of such a measure for the control of anthracite coal mines. Public attention was especially excited in this direction in 1902, during and after the great strike in the Pennsylvania region.

"Compulsory arbitration" is one of those misleading phrases, like "the conflict of capital and labor," which would much improve economic literature by their absence. The objections to the term are fatal. The thing in question for which a name is desired is the settlement by some legal authority of all labor troubles, whether this refers to the interpretation of past agreements or to the making of new ones. The word "arbitration" applied to the latter case is a misnomer, as I have sufficiently insisted. "Compulsory conciliation" would not be a more satisfactory term than "compulsory arbitration," as "conciliation"

is properly applied to efforts of less reach than arbitration, and opposing parties are not really conciliated by compulsion. It is needless to point out the contradiction within each phrase between the first word and the second. Mr. John Morley's epigram, "There is no greater enemy of the substantive than the adjective" finds no more forcible illustration (though probably not quite in the sense that he had in mind) than in the term "compulsory arbitration." Arbitration and conciliation are essentially voluntary processes, to which both parties to a dispute agree. The settlement cannot be compulsory and voluntary at the same time.

The compulsory settlement in view is one to be made by law and executed by courts. It is, then, no more compulsory than other positive laws, to all of which, when they give a command with a penalty attached for disobedience, the adjective "compulsory" of course applies. It is, to say the least, a superfluous word when legal regulation is intended. Laws that are not compulsory are writ in water. But the adjective is also one of ill omen, — "dyslogistic," as Bentham would have said. It conveys an unfavorable impression from the first. The disuse of such superfluous and confusing terms is therefore highly desirable if we would attain clear ideas. I do not wish to dodge an issue by a mere change of terms, but rather to meet it more squarely. The phrase "legal regulation" marks with precision the fact intended, — the taking of labor disputes into the field of law. If we use this term, issue can then be joined, with some probability of profitable discussion, between those who advocate such regulation and those who oppose it. The important point always is how far this regulation should extend. "Legal

regulation " is the term I shall henceforth employ in discussing the adjustment of labor disputes by governmental authorities. I trust that it may prove a case of the use of words as counters, not as money, according to Thomas Hobbes' definition.

Railroad corporations have received from the public great privileges, in the right of eminent domain in laying out their lines and in the practically exclusive occupation of the territory over which they run. These privileges constitute a quasi-monopoly which differs in very few respects from a complete monopoly. The power which granted the monopoly must, in reason, be free to readjust from time to time the terms on which it shall be enjoyed. Most American railroads at the present time do an interstate business, and therefore Congress can regulate them. But the various States have power over the business of railroads within their boundaries, and it will probably be best for the States to begin the application of such a policy as is advocated here for the prevention and the settlement of disputes on railroads. The employees should be permitted to organize freely in trade-unions, but ordinary strikes should not be allowed. They should be considered, in fact, entirely out of the question. (The recent experience of Victoria in putting down a strike on one of the state railways throws much light upon the relation of state-owned railways to their employees. The strike in Holland in 1902 is also instructive. Where the state does not own the railway lines the permission of sympathetic strikes especially would be absurd.)

Mr. C. W. Clark[1] has advocated a system of

[1] See the *Atlantic Monthly* for Jan., 1891.

licenses for the men employed upon railways, and he would inflict the penalty of loss of such license and consequent expulsion from the railway service upon any person who left the employ of the railway without giving due notice. He would constitute legal boards of arbitration ("labor boards" would be a better name), before which the authorities of the railway and their employees must bring all their disputes, not immediately settled by themselves, for definite adjustment. No employee would be obliged to continue at work indefinitely if not satisfied with the award of the board. If the railway, on the other hand, should be dissatisfied with the rate of wages fixed by the board, it would be allowed to change its employees and hire men, if it could, who would accept the previous rate, but it should not be allowed to interrupt the service which it owes the public while making this change.

The Board of Mediation and Arbitration of New York has distinguished itself among State boards by the ability and persistency with which for several years it advocated legal regulation in the case of railway disputes. It made a special report, January 13, 1891, on the strike which occurred in August, 1890, on the New York Central and Hudson River Railroad, — one of the formidable railroad strikes of the last fifteen years. This began on August 8, and was declared "off" on September 17, having proved an entire failure. The number of employees involved was between 4,500 and 5,000; the number who lost their situations because of joining the strike 3,500 to 4,000; the loss to the striking employees for wages was between $300,000 and $400,000; the loss to the corporation was estimated as $2,000,000. The public

suffered incalculably, and travellers were exposed to much danger of their lives. Half a dozen persons were killed by accidents consequent on the strike; numerous others suffered bodily injury. Three men were sentenced to terms in the State prison, having been convicted of displacement of a switch near Greenbush with the intention of throwing a passenger train from the track.

The Board was informed of the preparations for the strike, and tried in vain to prevent it. After it was declared, they conducted a public investigation which was fully reported. The superficial cause of the dispute was the discharge of a considerable number of employees at various times. The strikers claimed that these men were discharged because they were Knights of Labor. The company declared that it had good and sufficient reasons for discharging the men, without regard to the fact that any one of them belonged to the order. The special report continues: "But the real cause of the whole trouble lies away back of these surface indications, which are but effects that are to be found in the neglect of legislation to properly regulate by law the position of the employee and the employer in the railway service of the State, which is a public, not a private service." The Board commented in vigorous language upon the monstrosity of two such forces being arrayed against each other on a great highway of travel and transportation through the centre of the State, a highway created and established by the people, represented in the Senate and the Assembly, primarily for their own benefit. The railroad corporation engaged a considerable number of Pinkerton men to guard its lines, and the strikers were directed by a board of four

members, in addition to the Master Workman of the Knights of Labor, not one of whom was a citizen of the State, one being a resident of Canada. Such a spectacle was indeed a *reductio ad absurdum* of the claim of a railroad corporation to be allowed to manage its own affairs without "interference," as it is usually pleased to call it, by the public.

The State Board repeated in 1891 the recommendations which it had made in its preceding reports that the Legislature should pass laws to cope with this thoroughly irrational situation. It declared that prevention was needed, not cure, and that the power of the State to regulate railroads would justify the Legislature in making further rules with regard to the relations of the corporations and their employees. The State had prescribed maximum rates for travel on the lines, and the results were satisfactory. Why not use the same power in this other direction, where there was so great need of regulation? The Board's recommendations for legislation indicated seven points that should be covered by law: —

1. The service rendered by railroad corporations created by the State is a public service.

2. Entrance into such service should be by enlistment for a definite period, upon satisfactory examination as to mental and physical qualifications, with oath of fidelity to the people and to the corporation.

3. Resignation or dismissal from such service to be permitted for cause, to be stated in writing and filed with some designated authority, and to take effect after the lapse of a reasonable and fixed period.

4. Wages to be established at the time of entry, and changed only by mutual agreement, or decision by arbitration of a board chosen by the company and employees, or

by a State board, or through the action of both, the latter serving as an appellate body. Other differences that may arise to be settled in like manner.

5. Promotions to be made upon a system that may be devised, and agreeable to both parties.

6. Any combination of two or more persons to embarrass or prevent the operation of a railroad in the service of the people a misdemeanor; and any obstruction of or violence toward a railroad serving the people, endangering the safety of life and property, a felony with punishment of adequate severity.

7. Establishment of a beneficiary fund for the relief of employees disabled by sickness or accident, and for the relief of their families in case of death, as is done upon the lines of a number of railroad corporations in other States.

All to the end of a discharge of mutual obligations of railroad corporations and employees, the enjoyment of mutual benefits, and the securement of a permanent and satisfactory service to the people, who have a right to it, and a right to use every power necessary to obtain it.

The Board concluded its report with a forcible statement concerning the importance of the railroad business and the interest of the public in its proper operation: —

"The railroads of this State, with an aggregate capital of $714,262,535, operated by corporations created by the people, carried during the last fiscal year 744,487,396 passengers, and transported 110,653,003 tons of freight. For this service the people paid them for passenger service, $84,497,989; for freight service, $110,296,474; a total of $194,794,463. It would seem to be superfluous to elaborate argument to establish the fact that no man or set of men, in the management of the railroad corporations, or in their employment in the State or out of it, should be permitted to have it in their power to arrest, obstruct, or in

any manner interfere with this great service of the people." [1]

In August, 1892, the most serious labor disturbance of the year in New York occurred at Buffalo — a strike of the switchmen on the railroads centring there. The strikers numbered only a little over six hundred, but on account of the length of railroad tracks in the city and the manner in which these tracks ramify through the streets, it was very difficult to enforce law and order, and a large body of troops had to be called out. The direct and indirect cost of the strike was estimated at $300,000, and several lives were lost in consequence of it. In its next report the Board therefore reiterated its recommendations of previous years with fresh emphasis. It quoted with approval an able paper by Hon. Charles Francis Adams, of Massachusetts, on the prevention of railroad strikes, in which these pregnant sentences occur: —

"For a railroad to pause in its operations implies paralysis to the community which it serves. Such being the fact,

[1] The individualist's argument against these proposals of the New York Board — "its radically vicious remedy" — was that "these schemes ill accord with Anglo-Saxon ideas of personal liberty. The inherent right of a man to unite with others, and to go and come and work when he pleases, is of greater consequence than the business prosperity of railroads or the convenience of the public. . . . Personal liberty should never be sacrificed to the necessities of railroad transportation. . . . It may be well to consider whether such a body of industrial soldiery would be conducive to the continuance of republican institutions and the independence of these citizens themselves." (Mr. W. W. Cook, in *The Corporation Problem*, 1891, pp. 78, 79.) Such notions of a natural right of a railroad employee to come and go at his pleasure have a remarkably antique flavor to-day. "Personal liberty" to arrest the transportation system of a great State and to endanger the travel of thousands is a curious faith to set up — as curious as the imagination of danger to the "continuance of republican institutions."

it is futile to argue that the ordinary relation of employer and employed should obtain in the railroad service. . . . The permanent service of a great railroad company should in many essential respects be very much like a national service, that of harmony, for instance, except in one particular and a very important particular, to wit: those in it must always of necessity be at liberty to resign from it, in other words, to leave it. The man who is permanently enrolled should be free from the feeling of arbitrary dismissal. In order that he may have this security, a tribunal should be devised before which he would have the right to be heard in case charges of misdemeanor are advanced against him." Mr. Adams went on to declare that the only way to give an effectual voice to the employees would be to grant them representation.

The Board noted the coincidence between Mr. Adams' general plan and the scheme of arbitration incorporated in the New York statute under which the Board was constituted. This scheme was for arbitration voluntarily accepted by employers. The Board continued: —

Why should it not be made compulsory upon all corporations created by the State for public service? "Railroad corporations," says the Court of Appeals of the State of New York, "hold their property and exercise their franchises for the public benefit, and are, therefore, subject to legislative control." There are three principal parties in the premises: First, the people of the State of New York, who create railroad corporations primarily for their own benefit; second, the railroad corporations thus created; and, third, the men who operate the railroads. The State, as the first and principal party, possessed of undoubted power, should see to it that the other two parties agree in subserving the ends for which the railroad corporations are created, voluntarily, if they will, and compulsorily, if they will not.

The people should be protected in their right to the public service for which they have created the railroad corporations. And the State, having provided a plan for the settlement of grievances and disputes between railroad corporations and their employees, should compel its use by those parties, and, in case they cannot agree, step in itself and settle all matters in controversy between them.

The report of the Board for 1894 spoke in detail of the great Chicago strike of June–July in that year. "The forces called out during the strike to protect life and property and preserve order numbered 1,936 United States troops, 4,000 Illinois State militia, 5,000 extra deputy marshals, 250 extra deputy sheriffs, and 3,000 Chicago police, making a total of 14,186. There were 12 persons shot and fatally wounded, 575 arrests by the police, 71 arrested and indicted under United States statutes, and 119 arrested against whom indictments were not found. The Strike Commission appointed by President Cleveland [1] estimated the aggregate pecuniary loss, saying nothing of incidental and consequential losses, to be $7,097,367, divided as follows: Loss of railroads in property, $685,308, and in earnings, $4,672,916; loss of Pullman employees in wages, $350,000; loss in wages of 100,000 employees on the 24 railroads centring at Chicago, $1,389,143."

Among the recommendations made by the Strike Commission were the following: —

1. That there be a permanent United States strike commission of three members, with duties and powers of

[1] Hon. C. D. Wright was the chairman of this Commission; the other members were J. D. Kernan, of New York, and N. E. Worthington, of Illinois.

investigation and recommendation as to disputes between railroads and their employees similar to those vested in the Interstate Commerce Commission as to rates, etc.

(*a*) That, as in the interstate commerce act, power be given to the United States courts to compel railroads to obey the decisions of the commission, after summary hearing unattended by technicalities, and that no delays in obeying the decisions of the commission be allowed, pending appeals.

(*b*) That, whenever the parties to a controversy in a matter within the jurisdiction of the commission are one or more railroads upon one side and one or more national trade-unions, incorporated under chapter 567 of the United States Statutes of 1885–86, or under State statutes, upon the other, each side shall have the right to select a representative, who shall be appointed by the President to serve as a temporary member of the commission in hearing, adjusting, and determining that particular controversy.

(This provision would make it for the interest of labor organizations to incorporate under the law, and make the commission a practical board of conciliation. It would also tend to create confidence in the commission, and to give to that body in every hearing the benefit of practical knowledge of the situation upon both sides.)

(*c*) That, during the pendency of a proceeding before the commission inaugurated by national trade-unions, or by an incorporation of employees, it shall not be lawful for the railroads to discharge employees belonging thereto except for inefficiency, violation of law, or neglect of duty; nor for such unions or incorporation during such pendency to order, unite in, aid, or abet strikes or boycotts against the railroads complained of; nor, for a period of six months after a decision, for such railroads to discharge any such employees in whose places others shall be employed, except for the causes aforesaid; nor for any such employees, during a like period, to quit the service without giving thirty days' written notice of intention to do so, nor for any such

union or incorporation to order, counsel, or advise otherwise.

2. That chapter 567 of the United States Statutes of 1885–86 be amended so as to require national trade-unions to provide in their articles of incorporation, and in their constitutions, rules, and by-laws that a member shall cease to be such and forfeit all rights and privileges conferred on him by law as such by participating in or by instigating force or violence against persons or property during strikes or boycotts, or by seeking to prevent others from working through violence, threats, or intimidations; also, that members shall be no more personally liable for corporate acts than are stockholders in corporations.

3. The Commission does not feel warranted, with the study it has been able to give to the subject, to recommend positively the establishment of a license system by which all the higher employees or others of railroads engaged in interstate commerce should be licensed after due and proper examination, but it would recommend, and most urgently, that this subject be carefully and fully considered by the proper committee of Congress. Many railroad employees and some railroad officials examined, and many others who have filed their suggestions in writing with the Commission, are in favor of some such system. It involves too many complications, however, for the Commission to decide upon the exact plan, if any, which should be adopted.

The New York Board, calling the attention of the Legislature to these recommendations, claimed that the regulation desired by both the Commission and the Board could be applied best of all by the State.

The Board did not agree with the Strike Commission's position that complete reciprocal obligations could not be imposed upon labor.

It believes that such obligation can be imposed upon labor, and that this imposition is the key to the whole situa-

tion — the solution to the whole problem. . . . The difference between the plan of the federal Commission and the plan heretofore suggested by this Board is that the former assumes a disagreement between railroad corporations and their forces which must be settled by decree of governmental power, while the latter provides for a system of entry of the forces into the employment of railroad corporations that would obviate disagreement. The Commission aims at cure; the Board at prevention. The Board would deal with the operating forces before they enter the employment of the corporations; the Commission, after. Under the plan of the Board, there would be no coercion of employees to obey tribunals in selling their labor, and no encroachment upon any inherent or inalienable right. The selling of their labor, and all the conditions attendant upon it, would be of their own free will, — would be matter of voluntary contract, and perfectly understood by the contracting parties. The only coercion would be in compelling the corporations and the operating forces alike to live up to "complete reciprocal obligations."

In its reports for 1895–97, the New York Board returned to this subject. Again it put aside "compulsory arbitration" in general as an infringement upon the inalienable rights of the person, guaranteed by the laws of the country. But again it expressly excepted common carriers and similar corporations organized under the laws of the State and enjoying special privileges.

Two other State boards of arbitration, among those whose activity has been of some importance, have also declared themselves in favor of a system of legal regulation in the case of railway and trolley lines. The Ohio State Board of Arbitration (Report for 1899, p. 5), apropos of the strike of that year in Cleveland on the trolley lines, advocated "a constrained resump-

tion of working relations between the parties for a limited time, pending settlement, arbitration, or other disposition," as likely to be of "incalculable benefit both to the parties involved and the public." The Indiana Labor Commission (Report for 1899–1900, p. 11) thus speaks of the necessity of such regulation in cases where the public is especially exposed to injury and danger: —

> A strike in a factory would not jeopardize the public's interest to the same extent that one would on a street-car line of a populous city or on a railway system. Strikes and lockouts involving or largely affecting freight and passenger traffic cause inconveniences and losses of the gravest consequence, and that frequently culminate in a necessity for repression by force. The instrumentality usually employed has been the constabulary or militia.
>
> Vesting in some State agency the power to enforce arbitration when the public welfare is paramount to all other considerations is a crying need of the times. The mere power to act when so petitioned would not fully meet the necessities which sometimes arise. Frequently the injuries sustained by the public are greatly more grievous than those of either contestant, or both combined, for that matter. Several times this situation has existed in Indiana, and disastrous consequences have followed which would have been averted if enforced arbitration had been provided for. Those with experience and observation know that often labor troubles progress with an ever-increasing intensity; both sides become deaf to reason, refuse to yield, compromise, or arbitrate in the absence of State intervention. Meantime the helpless public must drift defencelessly along, suffering from evils for which it is in no wise responsible, and from which there is no relief until the combatants are either coerced by force or have expended their ill-directed strength, and by their exhaustion are forced to quit the

fight. Thus upon innocent persons are entailed pecuniary losses. This fact forces us to confront the proposition: Is it not the duty of the State to reduce these disturbances to a minimum by appropriate legislation?

In the opinion of your labor commission, the law providing for arbitration should be amended in two particulars:

First. In all cases where disputes arise, from any cause, it should be made unlawful for a lockout or strike to be resorted to without first attempting conciliation, the offence to be punishable as a misdemeanor.

Secondly. Whenever, during the process of a lockout or strike, human life is jeopardized, security to property is threatened, public order is overthrown, or the law is wilfully defied or violated, both parties to such lockout or strike should be required to obey a mandatory order to submit their contention to arbitration in some manner mutually agreeable.

The judgment on this subject of Mr. E. A. Moseley, secretary of the Interstate Commerce Commission from its formation in 1887, carries weight: —

Two things are indispensable to the prevention of strikes on railways. One is the full recognition of railway labor societies as corporations. The other is the settlement of disputes between railway employers and railway employees by means of compulsory arbitration between the men, represented by their labor corporation, as one party, and the stockholders of the company, represented by the railway corporation, as the other party. We then obtain that *equality of power and force which compels* the essential requisites of friendly relation, respect, consideration, and forbearance. . . . Congress unquestionably has power to compel arbitration. . . . It is but a step further to provide that organizations of railway employees shall, when disputes arise with railway managers, file approved bonds with designated officials for and in behalf of the men, that they will abide by the deci-

sion of the board of arbitration; that the railway corporations shall likewise file similar bonds; and that awards made under such conditions shall be enforceable in the courts.[1]

Professor R. T. Ely, in his "Studies in the Evolution of Industrial Society" (1903), roughly classifies industries according to the amount of legal regulation to which labor disputes in them should be subject: —

> Naturally, railways, telegraph lines, and generally the agencies of transportation and communication, together with lighting plants and other so-called local "public utilities," belong in a . . . class in which the social interest asserts itself most vigorously. Here, clearly, the interest of society is paramount, and the duty of preserving the continuous operation of these industries is like that of the prevention of crime. In other words, in these particular cases we should have courts of conciliation and arbitration with adequate powers to settle disputes without a recourse to private industrial warfare (p. 383).

To the general position thus taken by the boards of arbitration of New York, Indiana, and Ohio, by Mr. Adams, Mr. Moseley, and Professor Ely, I do not hesitate to give a cordial assent. Strikes on steam railways or street lines and on steamships are sure to cause untold damage to the public. Strikes and lockouts should therefore be strictly prohibited, collective bargaining should be required, and in case it is not effected, the law should in some way settle the dispute with final authority. Then, if the employees do not relish the terms imposed, let them be at liberty to withdraw gradually and in accordance with the rules for giving notice, without disturbing traffic. It is dif-

[1] *Arbitration as Applied to Railway Corporations and their Employees*, by E. A. Moseley, pp. 16, 20 (1893).

ficult to conceive a self-respecting, intelligent society preferring the anarchy and riot of the usual strike on a railway or a trolley line to legal regulation of such disputes by an expert commission.

The same argument will apply to other public utilities, like gas works, electric light works, and water works owned by companies. Just as these businesses are, in fact, diverse from ordinary private businesses, so they should be more subject to public control in respect to labor relations. The two parties have no proper claims to be "let alone" to inconvenience the public as much as they see fit. If they will not of themselves continue to supply the service incumbent upon them, the State should present to them the alternative of forfeiture of charter and other privileges, or the acceptance of working rules imposed by a governmental board.

Other industries than those just named may occasionally be affected by disputes which inflict immense injury on the public, as in the case of the anthracite coal strike of 1902 in Pennsylvania. Where a true monopoly exists, as in this case, the same arguments would apply as in the case of railways. But self-interest might be expected in most cases to be more potent here than in transportation industries, and the sleeping lion would not need to be aroused so often by legislation. That a large part of the American public would be ready, in case of a second prolonged strike in the anthracite coal mines, for even such a drastic measure as appropriation by the State or the national government is probable, judging from the reception given to the Democratic platform of 1902 in New York, which proposed such a measure. The unpre-

cedented action of President Roosevelt furnished an easier way out of the existing trouble, and the proposal naturally reacted at the polls on the party making it. But a renewal of it, in similar circumstances, would be highly probable, and its acceptance scarcely less so, if operators and miners persisted in a course the inevitable result of which would be great harm to the public. A people which has shown so much ability in following a policy of statesmanlike opportunism should not hesitate long to adopt a system of legal regulation of labor disputes that would render a step into socialism like government mine-owning superfluous. By the side of such a measure as this, a scheme like the New Zealand labor laws would be "animated moderation."

CHAPTER XIV

LEGAL REGULATION OF LABOR DISPUTES IN NEW ZEALAND

New Zealand is a notable experiment station in the art of government. It has been the first country in the world to establish a large measure of legal regulation of labor disputes. The trial has been prolonged for eight years, and appears to be very successful so far. The method followed can no longer be dismissed as impossible. The experience of New Zealand deserves, on the contrary, full and impartial discussion.

English and American readers have gained much of their knowledge of the New Zealand "Industrial Conciliation and Arbitration Act" (to give its legal short title) from the readable little volume (1900) by the late Henry D. Lloyd, of Chicago, entitled "A Country without Strikes."[1] As this is very accessible, I shall quote mainly from other sources.

Mr. Reeves' candid narrative in his latest work[2]

[1] Mr. Lloyd visited New Zealand in February, 1899. He has given a briefer account of the workings of the act in another volume, *In Newest England*. Mr. Lloyd was set down by one of his critics as belonging to "the impressionist school of economics;" but economists should not disregard serious testimony on social problems because given in striking literary form by a person whose ardor may be under the control of good sense. Mr. W. P. Reeves, the author of the act, speaks of Mr. Lloyd as "a whole-hearted champion," writing from the "cordially sympathetic standpoint," whose "statements on matters of fact" are "correct throughout." I can bear similar testimony to the value of his book on labor copartnership in Great Britain.

[2] *State Experiments in Australia and New Zealand*, in two volumes,

gives the following particulars concerning the history of the New Zealand Arbitration Act. Introduced in Parliament in 1891, but not passed until 1894, it went into operation in 1896. A number of laws, giving opportunities for optional arbitration, had previously been passed in Australia, but had failed to produce appreciable good results. The South Australian compulsory law of 1894 was also a failure. The chief reason for the New Zealand law was the long series of strikes in the years 1890–94, which involved sailors, wharf-laborers, shearers, station hands, boot-workers, silver-miners, coal-miners, tramway men, gas-workers, and others.

The maritime strike of 1890 produced a profound effect in New Zealand. It began in a trifling quarrel, which might easily have been arranged, over the dismissal of a striker for being a union delegate. The colonial steamship companies of Australia would not tolerate "the affiliation of a union of steamship officers with the Trade and Labour Council of Melbourne and the Federated Seamen's Union." Employers and unionists were determined to "fight it out;" a great strike ensued which spread into New Zealand, a thousand miles distant. Seamen and wharf-laborers and the Union Company of shipowners "were drawn into a useless and mischievous conflict. . . . The public were furious at the entanglement, and rightly so," and they laid the whole blame upon the strikers. The maritime employers were likely to be winners, and when they were invited, in pursuance of a resolution of the New

London, 1902. The exposition comes down to May, 1902, and the book was published in November. See volume ii. chapter i. pp. 69–108, for the full treatment of Industrial Arbitration.

Zealand House of Representatives, to a conference with the workmen, they "only sent a representative to refuse flatly to concede anything." The employers in Sydney and Melbourne were equally stiff-necked. "Strongly as public opinion ran against unionism then and for two years afterwards, it was this attitude which gave the advocates of State arbitration their first chance."

The shearers' strike began in Queensland in January, 1891, lasted five months, and involved from eight thousand to ten thousand men; the result was a collective bargain. Much violence attended the strike, and the government alone spent £100,000 before it closed. A second strike, in the same occupation, two years later, was hopeless from the first. In the Broken Hill silver mines of Australia there was a strike against piece-work in 1892. Five thousand men were out for five weeks, losing £200,000 in wages, while the loss to the employers was half a million. The South Australian railway department suffered to the extent of £150,000. The strike collapsed, and some of the strikers were severely punished by the courts, as others had been in the shearers' strike. The mining companies "would not hear of arbitration."

By this time "unionists everywhere had begun to ask for a law which should make it impossible for conference and arbitration to be refused. Sobered by defeat, they cried out for state arbitration. The public mind was profoundly affected, and sympathy was now to some extent transferred to the defeated men. . . . The desire for something juster, fairer, and more peaceful than this (the strike and the lockout) was

strong." In the Australian colonies no results of consequence followed, but in New Zealand "an arbitration bill was drafted in 1891; and somewhat widely circulated. Its reception was the reverse of enthusiastic, and it was postponed for a year. In 1892 it was pushed on in earnest." But the draft of 1891, passed three times by the House of Representatives before enactment, was amended twice by the Upper Chamber "striking out all the parts relating to compulsion and the arbitration court." A general election occurred, and this was followed by the acceptance of the bill, and the act became operative about the end of 1895. "During the three years and a half in which its fate was in suspense, it neither roused the least enthusiasm nor attracted very much attention. . . . The 'general public' was not interested in its fate. Only the trade-union leaders studied its provisions, decided to support it, and did so without flinching. They neither conceived nor moulded it, but they accepted it. . . . Throughout, its framer (Mr. Reeves himself) refused all compromise. . . . He had convinced himself that a half measure would be worse than none. 'Frankly, the bill is but an experiment, but it is an experiment well worth the trying. Try it, and if it fail, repeal it.' Mildly interested, rather amused, very doubtful, Parliament allowed it to become law."

The original act bears the date of August 31, 1894 (No. 14). It has been amended five times as experience showed the need of change. The alterations made by the first three amendatory acts[1] were incorporated in the act of October 20, 1900 (64 Victoria,

[1] These were the Amendment Acts of October 18, 1895 (No. 30), October 17, 1896 (No. 57), and November 5, 1898 (No. 40).

No. 51) "to consolidate and amend the law relating to the settlement of industrial disputes by conciliation and arbitration." This principal act was again amended by the act of November 7, 1901 (1 Edward VII., No. 37). In the following abstract the law will be given as it now stands, with occasional indications of the changes made between 1894 and 1901.[1]

The term "compulsory arbitration" does not appear in the title or the text of any of the six New Zealand acts, or of the New South Wales act of 1901. The act of 1898 suppressed in the title of the original act the words "to encourage the formation of industrial unions and associations and," preceding the remaining words, "to facilitate the settlement of industrial disputes by conciliation and arbitration."

The short title of the present principal act is "The Industrial Conciliation and Arbitration Act, 1900," the declaration of purpose having been omitted in consolidation. The general administration of the act is in the hands of the Minister for Labor and the Secretary for Labor, who is the registrar of "industrial unions."

Registration. — Any society consisting of not less than two persons in the case of employers, or seven in the case

[1] See *The Labour Laws of New Zealand*, third edition, Wellington, 1902, pp. 106–147. The law previous to 1900 is given in vol. xvi. of the *Report of the United States Industrial Commission*, pp. 203–214, with an appended abstract by Mr. W. F. Willoughby, of the Department of Labor. The amendments made by the acts of 1895, 1896, and 1898 were incorporated by Mr. Willoughby, with notes and footnotes to indicate the nature and the dates of the alterations. The Report reprints this matter from the *Bulletin of the Department of Labor* (No. 33), vol. vi. pp. 207–230. I follow here the Consolidated Act of 1900, noting the changes made by the amending act of 1901. These two documents are given in full in the *Fifteenth Annual Report of the New York Board of Mediation and Arbitration* (Albany, 1902), pp. 303–357. The *Bulletin of the Bureau of Labor* (No. 49), gives the act of 1900 as amended in 1901, pp. 1282–1311.

of workers,[1] lawfully associated for the purpose of protecting or furthering the interests of employers or workers in or in connection with any specified industry [2] or industries in the colony,[3] may be registered as an industrial union [4] under the following conditions. The written application for registration must give the name of the proposed industrial union of employers or of workers; the resolution passed by a majority of the members of the society desiring registration present at a meeting "specially called for that purpose only;" and the rules of the society. These rules, in addition to the more common provisions for good business management, must provide the mode in which "industrial agreements" shall be made and executed, and in what manner the society shall be represented in any proceedings before a board of conciliation for an industrial district or the court of arbitration constituted under the act. No member, under the rules, "shall discontinue his membership without giving at least three months' notice," or until he "has paid all fees, fines, levies, or other dues payable by him." If any member is in arrears for twelve months, his name shall be struck off from the roll, but he shall be still liable for payment of these arrears. These preliminaries having been arranged, "the registrar shall without fee, register the society as an industrial union," and issue a certificate of registration.

[1] The New South Wales act says "any person or association of persons" having employed "not less than fifty employees;" the New Zealand act defines "employer" to include "persons, firms, companies, and corporations employing one or more workers." "Worker" was defined in 1901 as "any person of any age, of either sex, employed by any employer to do any skilled or unskilled manual or clerical work for hire or reward."

[2] "'Industry' means any business, trade, manufacture, undertaking, calling, or employment in which workers are employed."

[3] Under a provision of the law of 1901 a company registered out of New Zealand and carrying on business in that country through an agent with a power of attorney may be registered as an industrial union of employers.

[4] "Union" in this abstract means "industrial union" hereafter, unless otherwise stated.

"Every society registered as an industrial union shall as from the date of registration, but solely for the purposes of this act, become a body corporate by the registered name, having perpetual succession and a common seal." The unions are named in this manner: "The Christchurch Grocers Industrial Union of Employers," or "The Wellington Tram Drivers Industrial Union of Workers." Any trade-union already registered under the Trade-Union Act of 1878 may be registered under the same name, the insertion of the particulars just instanced being provided for; "every branch of a trade-union shall be considered a distinct union, and may be separately registered as an industrial union;" and the existing rules of the trade-union, when consistent with this act, shall become the rules of this industrial union. In the case of employers, "where a copartnership firm is a member of the society," each partner residing in the colony shall be deemed a member, and must be named on the list; "where the society to be registered is an incorporated company" this rule does not apply. "Any company incorporated under any act may be registered as an industrial union of employers" by vote of the directors: if the articles or rules of such a company are repugnant in any way to this act, they shall be construed as applying exclusively to the company. The registrar may refuse a registration when in the same territory and the same industry there is already an industrial union which the men could conveniently join. Appeal may be made from the registrar to the court in such a case, the burden of proof being on the applicants. "The effect of registration shall be to render the industrial union," and all its members, present or future, "subject to the jurisdiction" of the boards and the court, "and liable to all the provisions of this act," and they "shall be bound by the rules of the industrial union." A printed copy of these rules shall be given to any person on payment of not more than one shilling.

"All fees, fines, levies, or dues payable to an industrial union" by any member may "be sued for and recovered

in the name of the union in any court of competent jurisdiction." A union "may purchase or take on lease, in the name of the union or the trustees for the union, any house or building, and any land not exceeding five acres, and may sell, mortgage, exchange, or let the same or any part thereof." "Every industrial union may sue or be sued for the purposes of this act by the name by which it is registered." In January of each year every union must report its membership in detail to the registrar, to be reported by him to Parliament. A union may have its registration cancelled by the registrar, after six weeks' public notice by him, but this shall not be done "during the progress of any conciliation or arbitration proceedings affecting such union until the board or court has given its decision or made its award;" the registrar must be satisfied that the cancellation is desired by a majority of the members. "The effect of the cancellation shall be to dissolve the incorporation," but the effect is purely for the future: prior industrial agreements and awards or orders of the court shall not be affected. If two or more unions in an industry are represented by a council or other body, it may be registered as an "industrial association" which shall have all the powers of a union, except in regard to the membership of the boards and the court.

Related Trades. — An industrial dispute coming under the act, which is referred for settlement, may be one occurring in the industry of the party making application or in "any industry related thereto." Related industries are defined as "branches of the same trade," or "so connected that industrial matters relating to the one may affect the other; thus bricklaying, masonry, carpentering, and painting are related industries, being all branches of the building trade." The governor has power to declare in the "Gazette" from time to time what industries shall be considered related, and the court has the same power in any industrial dispute. A union may bring a case before the board or court without any member of the union being employed by any party to the dispute or being personally concerned.

Industrial Agreements. — Industrial agreements may be made only by trade-unions or industrial unions, or associations, or employers. Such agreements may provide for any matter or thing affecting any industrial matter, or for the prevention or settlement of a dispute. They are to be valid for a time not longer than three years, and must begin with a reference to the Conciliation and Arbitration Act as their authority. If this term expires, the agreement "shall continue in force until superseded by another . . . or by an award of the court," unless the workers' union has cancelled its registration. While this agreement is in force any union, or association, or employer may become a party to it by filing a notice in the prescribed form. Every such agreement "shall be binding on the parties thereto and also on every member of any industrial union or industrial association which is a party thereto;" it "may be varied, renewed, or cancelled" by any subsequent agreement by all the parties.

Conciliation Boards. — New Zealand is to be divided by the governor into such industrial districts [now eight], with such names and boundaries as he thinks fit. A clerk of awards is appointed for each district: he may hold some other office in the public service. As a permanent officer, he is to discharge all the usual duties of a clerk of courts, convening the board, issuing summonses, acting as returning officer, and the like.

For every industrial district a board of conciliation is established, with jurisdiction over disputes referred to it. It shall consist of an unequal number of persons, as the governor determines, but not more than five. The chairman is to be elected by the other members, who shall themselves be elected in equal number by the respective unions of employers and of workers in the district, the unions voting separately. The members hold office for three years, or until their successors are chosen, and are eligible for re-election. If the number of persons validly nominated does not exceed the number to be elected, the clerk "shall at

once declare such persons elected." Each union shall have as many votes as there are persons to be elected, and these votes may be cumulative: in the case of a tie the clerk has a casting vote. His decision of any disputed point in the election is final. He convenes the new board, who first proceed to elect a chairman, not one of their number. If the chairman or any member of the board is found to be guilty of inciting any industrial union or employer to commit any breach of an industrial agreement or award, or is absent during four consecutive sittings of the board, his office shall thereby become vacant. A quorum must include the chairman and one member "of each side." A majority of votes of the members present, exclusive of the chairman, shall decide any matter before the board: the chairman may have a casting vote, however. "The board may act notwithstanding any vacancy," informality in election, or supposed incapacity of a member: the governor may extend for not more than one month the term of office of the members in order to enable the board to dispose of a dispute before it.

"A special board of conciliators shall, on the application of either party to the dispute . . . be constituted from time to time to meet any case of industrial dispute:" it shall take the place of the conciliation board, and be elected in the same general manner, but the members must be, excepting the chairman, "experts in the particular trade under dispute;" all or any of them may be members of an existing board of conciliation.

"Any industrial dispute may be referred for settlement to a board by application in that behalf made by any party thereto." The employer, who is a party, may appear in person or by his agent duly appointed in writing. The industrial union or association may appear by its chairman, or secretary, or by any number of persons (not exceeding three) appointed in writing by the chairman. "No counsel, or barrister, or solicitor, whether acting under a power of attorney or otherwise, shall be allowed to appear or be heard

before a board, or any committee thereof, unless all the parties to the reference expressly consent thereto, or unless he is a *bona fide* employer or worker in the industry to which the dispute relates: " every party appearing by a representative shall be bound by his acts.

" The board shall in such manner as it thinks fit, carefully and expeditiously inquire into the dispute, and all matters affecting the merits thereof, and the right settlement thereof." It shall have all the powers of summoning witnesses, administering oaths, compelling, hearing, and receiving evidence, and preserving order which are by this act conferred on the court, save and except the production of books. " It may make all such suggestions and do all such things as it deems right and proper for inducing the parties to come to a fair and amicable settlement of the dispute," and it may adjourn the proceedings for any reasonable period, to allow the parties to agree upon a settlement. It may refer the dispute to a committee of its members, made up equally of the representatives of employers and of workers, to facilitate a settlement. If a settlement is reached by the parties " it shall be set forth in an industrial agreement; " when this is duly executed and filed, the board shall report the fact to the clerk. In the absence of such a settlement " the board shall make such recommendation for the settlement of the dispute according to the merits and substantial justice of the case as the board thinks fit." " The recommendation shall deal with each item of the dispute and state in plain terms, avoiding as far as possible all technicalities, what, in the board's opinion, should or should not be done by the respective parties." It shall state the period during which the proposed settlement should continue in force, being in no case less than six months nor more than three years, and also the date from which it should commence, being not sooner than one month nor later than three months after the date of the recommendation. The board's report must be made within two months after the application for reference was filed,

"or within such extended period, not exceeding an additional month, as the board thinks fit." The members of the board take the usual oath on assuming their functions, including a statement that "except in the discharge of their duties they will not disclose to any person any evidence or other matter brought before the board."

"If all or any of the parties to the reference are willing to accept the board's recommendation, either as a whole or with modifications," they may within a month "either execute and file an industrial agreement," or file "a memorandum of settlement." This latter document must state with what modifications, if any, the recommendation is accepted: the board's recommendation shall thereupon, in harmony with the memorandum, operate and be enforceable in the same manner in all respects as an industrial agreement. At any time before the board files a recommendation, all or any of the parties may by memorandum of consent agree to accept the recommendation; in such case the recommendation shall be as potent as an industrial agreement. If the recommendation of the board is not acceptable to the parties to the dispute, any of them may, within a month after it is made, refer the dispute to the court: but if no such reference has been made by the end of the month, the board's recommendation shall stand valid as an industrial agreement.

The Court of Arbitration. — A single Court of Arbitration is established for the whole colony, to consist of three members appointed by the governor. One shall be appointed on the recommendation of the employers' unions and one on that of the workers' unions. The third, the president of the court, shall be a judge of the Supreme Court. (If either of the unions fail to recommend a name, the governor shall appoint a fit person.) The members hold office for three years, or until the appointment of their successors, and are eligible for reappointment. The office may become vacant for the same reason as in the case of the Conciliation Board, and the members take the same oath.

The governor may appoint such clerks and other officers of the court as he sees fit. The parties to the proceedings shall, in general, be the same as in proceedings before the boards, and the provisions for their appearance personally, by agent, or by counsel, shall be the same. "The court shall in all matters before it have full and exclusive jurisdiction to determine the same in such manner in all respects as in equity and good conscience it thinks fit."

Evidence. — Formal matters which have been proved or admitted before the board shall be deemed to be proved. The clerk shall issue a summons to any person desired by any of the parties to give evidence; he shall be required to produce books, papers, or other documents in his possession or under his control relating in any way to the proceedings. These may be inspected by the court, and "by such of the parties as the court allows; but the information obtained therefrom shall not be made public." A person summoned who fails to attend or produce evidence required in print or writing is liable to a penalty not exceeding twenty pounds or to imprisonment not exceeding one month. The court, for the purpose of obtaining evidence of witnesses at a distance, has all the powers and functions of a stipendiary magistrate: it may take evidence on oath; it may "accept, admit, and call for such evidence as in equity and good conscience it thinks fit, whether strictly legal evidence or not," and it may compel any party to the proceedings to give evidence. The president and at least one other member must be present at every sitting; a majority of those present decide the case. The court may refer any matters before it to a board for investigation and report, and may base its award on the report of the board. It may "dismiss any matters referred to it which it thinks frivolous or trivial," and award costs against the plaintiff. In its award the court may deal with the question of costs, as it sees fit, but in no case shall it allow costs on "account of agents, solicitors, or counsel."

Awards. — The award must be made within one month; in

special circumstances in a longer time. It shall be framed "in such a manner as shall best express the decision of the court, avoiding all technicality where possible." It shall hold good for a specified period not exceeding three years, and it shall continue in force until a new award has been duly made, except where a union of workers has cancelled its registration. "The award shall also state in clear terms what is or is not to be done by each party on whom the award is binding, or by the workers affected by the award, and may provide for an alternative course to be taken by any party, provided that in no case shall the court have power to fix any age for the commencement or termination of apprenticeship. The award shall extend to and bind as subsequent party thereto every trade-union, industrial union, industrial association, or employer who, not being original party thereto, is at any time whilst the award is in force connected with or engaged in the industry to which the award applies within the industrial district to which the award relates." The court may, on the other hand, limit the operation of an award, past or present, to any city, town, or district in an industrial district, and it may afterward extend the operation within the district. As long as any award, made previous to or after the passage of the act, is in force, the court may amend its provisions for the purpose of remedying any defect therein or of giving fuller effect thereto; it may extend the award to include "any specified trade-union, industrial union, industrial association, or employer in the colony not then bound thereby or party thereto, but connected with or engaged in the same industry . . . provided that the court shall not act under this sub-section except when the award relates to a trade or manufacture the products of which enter into competition in any market with those manufactured in another industrial district, and a majority of the employers engaged and of the union of workers concerned in the trade or manufacture are bound by the award." If objection is made by an intended party to such an extension, the court shall give it

a hearing in its own district. The award binds any worker, not a member of a union embraced in its view, who is employed by an employer on whom the award is binding, and he is liable to a penalty for breach of such award. These powers in the court, of amending and extending awards, may be exercised on the application of any party bound by them.

"Proceedings in the court shall not be impeached or held back for want of form, nor shall the same be removable to any court by *certiorari* or otherwise; and no award, order, or proceeding of the court shall be liable to be challenged, appealed against, reviewed, quashed, or called in question by any court of judicature on any account whatsoever. . . . The court may fix and determine what shall constitute a breach of the award" and determine the maximum penalty, not exceeding five hundred pounds payable by any party. "In its award or by order made . . . whilst the award is in force, the court may prescribe a minimum rate of wages or other remuneration, with special provision for a lower rate being fixed in the case of any worker who is unable to earn the prescribed minimum." "In so far as the award itself imposes a penalty or costs it shall be deemed to be an order of the court. . . . If any party on whom the award is binding commits any breach thereof by act or default . . . the court may impose such penalty as it deems just, with or without costs, but not exceeding five hundred pounds." A certificate in prescribed form, "specifying the amount payable and the respective parties or persons by and to whom the same is payable, may be filed in any court having civil jurisdiction to the extent of such amount, and shall thereupon be enforceable in all respects as a final judgment of the court:" to enforce satisfaction, "where there are two or more judgment creditors, . . . process may be issued separately by each judgment creditor against the property of his judgment debtor. . . . All property belonging to the judgment debtor (including therein, in the case of a trade-union, or an industrial union, or

industrial association, all property held by trustees for the judgment debtor) shall be available in or towards satisfaction of the judgment debt, and if the judgment debtor is a trade-union, or an industrial union, or an industrial association, and its property is insufficient to fully satisfy the judgment debt, its members shall be liable for the deficiency," but not for more than ten pounds each. The provisions for enforcing awards or orders of the court just recited shall apply to industrial agreements as if they were awards of the court.

General Provisions as to Board and Court. — No bankrupt who has not obtained his final discharge, no person convicted of serious crime, or of unsound mind, or an alien, shall be qualified to serve as a member. No dispute shall be referred to a board, nor application be made to enforce any industrial agreement or award or order of the court, unless the union hold a special meeting at which a resolution to this effect is voted by a majority of the members; a similar provision applies to industrial associations. When a dispute has been referred to the board, until it "has been finally disposed of by the board or the court, neither the parties to the dispute nor the workers affected by the dispute shall, on account of the dispute, do or be concerned in doing, directly or indirectly, anything in the nature of a strike or lockout, or of a suspension or discontinuance of employment or work, but the relationship of employer and employed shall continue uninterrupted by the dispute or anything arising out of the dispute, or anything preliminary to the reference of the dispute and connected therewith. The dismissal of any worker, or the discontinuance of work by any worker, pending the final disposition of an industrial dispute, shall be deemed to be a default," unless the party charged with such default satisfies the court that the action taken was not on account of the dispute. The penalty for default shall not exceed fifty pounds. Whenever technical questions are involved, the board or court may direct that two experts, one nominated by each side,

shall sit as experts simply, without votes. In order to meet the "substantial merits and equities of the case" the board or court may direct parties to be joined or struck out; annul or waive any error or defect in the proceedings; extend the time within which anything is to be done by any party; and generally give such directions as are deemed necessary or expedient in the premises. Persons guilty of "any wilful contempt in the face of the board or court" may be summarily dealt with. "If any person prints or publishes anything calculated to obstruct or in any way interfere with or prejudicially affect any matter before the board or court, he shall for every such offence be liable to a penalty not exceeding fifty pounds." "If, without good cause shown, any party to proceedings before the board or court fails to attend or be represented, the board or court may proceed and act as fully in the matter before it as if such party had duly attended or been represented." "Informality or error of form, or non-compliance with this act" shall not vitiate the action of the board or court. Their proceedings shall be conducted during the day or at night, and openly; but the public may be excluded at any stage. The board or the court, or any person authorized, "may enter upon any manufactory, building, workshop, factory, mine, mine-workings, ship or vessel shed, place or premises of any kind whatsoever, wherein or in respect of which any industry is carried on or any work is being or has been done or commenced, or any matter or thing is taking or has taken place, which is made the subject of a reference;" it may "inspect and view any work, material, machinery, appliances, article, matter, or thing whatsoever" found there; it may interrogate any person or persons there "in respect of or in relation to any matter or thing hereinbefore mentioned." The usual penalty of the act is affixed to any obstruction in this direction.

Special provisions are made in respect to the employees on the government railways. "The Amalgamated Society of Railway Servants shall be deemed to be registered under

the act. . . . The Minister for Railways may from time to time enter into industrial agreements with the society in like manner in all respects as if the management of the government railways were an industry, and he were the employer of all workers employed therein." The society, in case of a dispute, may by petition "pray the court to hear and determine the same." The proceedings are in large degree the same as in the case of unofficial employers, but in no case shall a board have any jurisdiction, nor shall the society have anything to do with the election of a board, and "except for the purposes of this section the court shall have no jurisdiction over the society." The society may, however, act like any industrial union of workers in regard to voting for one member of the court.

The governor has power under the act to prescribe the fees of members of the boards and the court, and to make all minor regulations needed. The expenses of the system of arbitration incurred by the government are to be defrayed out of annual appropriations made by Parliament. No stamp duty is required on documents relating in any way to the act.

The amending act of 1901 concludes with these two noteworthy sections: "21. Either party to an industrial dispute which has been referred to a board of conciliation may, previous to the hearing of such dispute by the board, file with the clerk an application in writing requiring the dispute to be referred to the court of arbitration, and that court shall have jurisdiction" thereupon at once. "24. When workers engaged upon different trades are employed in any one business of any particular employer, the court may make one award applicable to such business, and embracing, as the court may think fit, the whole or part of the various branches constituting the business of such employer."

The New Zealand act is, from first to last, a conscious and definite, but limited, advance of the law-making power into the field of industry. The nature

of the steps it has taken in the direction of assimilating industrial disputes to other disputes generally referred to the courts in civilized countries will perhaps appear more plainly from a few comments. The first point, to bring employers and employed under the jurisdiction of the act, is reached by providing for their registration by a state authority. Any two employers, or any seven "workers," in a particular industry, constituting an already existing society or trade-union, or uniting expressly in order to take advantage of this act, may register as an "industrial union." The rules of this union must look to the formation of "industrial agreements," or collective bargaining, and to representation before the boards or the court specially instituted by this act. To ensure a certain amount of permanence, every member shall give three months' notice of discontinuance of his membership, and he cannot withdraw unless his account with the union stands clear.

Once registered, the union comes under the second important provision that it is now a body fully incorporated in the eyes of the law, *but solely for the purposes of this act.* It is henceforth liable to discharge all obligations laid upon it, and to enjoy all privileges granted to it, by this act and no other. No industrial union, as such, therefore, can sue or be sued except so far as this one act provides. The act incorporates these unions in a limited degree only, but this provision does not interfere with the legal privileges or responsibilities, under the common law, or under other statutes, of a *trade*-union, or an association which has not registered of its own free will. The unions are now under the jurisdiction of the boards of conciliation

and the court of arbitration, and cannot escape liability without cancelling their registration. There is no compulsion about registering, and no forcible detention of the union under the law, beyond a decent period required to give notice of a desire to withdraw. The act proceeds to give privileges to the industrial union in view of the obligations just rehearsed. It can hold its members legally responsible for sums of money due it under its votes; it can dispose of real estate in the usual legal manner, suing or being sued like other incorporated associations. If its registration is cancelled, its members, as a body and as individuals, return to their former condition of irresponsibility before the law.

The provisions in regard to "related trades" give the desirable power to a union to adjust itself to the general field to which its special activity belongs, as in the "building trades," so called. These sections of the act greatly enlarge the privileges of unions in comparison with the limited powers they first enjoyed in their own specific industries. The justification of such an extension of a law intended in time to cover all the industries of the country is obvious.

The method in the mind of the framers of the act for securing permanent industrial peace was the formation of "industrial agreements," *i. e.*, the bargains between bodies of employers, on one side, and bodies of workers, on the other side, of which this volume has had so much to say. The act grants this privilege only to bodies incorporated under it, except that trade-unions not registered as industrial unions may make such agreements; then, of course, they will be bound by the act as much as an industrial union would be.

A most important section provides that an industrial agreement, which cannot be valid for more than three years as its first term, shall continue in force at the end of the period in the absence of specific action to the contrary. The effect of this provision is to relieve the court and the parties to the agreement from much unnecessary trouble in case the conditions have not been essentially changed; the agreement may also be made the basis of changes by the parties; it may be expressly renewed, or cancelled, at their joint pleasure. But, while in legal existence, it absolutely binds all parties to it, and every single member of the unions, with a complete legal subjection. Thus is law made supreme over this realm of industrial disputes, previously lawless in such large degree, when the parties have freely come under its jurisdiction. "If only law can give us freedom," as Burke said, then both parties are really more free than before. If they fight each other now, it must be in courts, under laws of civilized warfare prescribed by a power able to enforce them!

Now comes the machinery which brings together these bodies of employers and of workers, duly incorporated, to adjust their disputes in a calm and rational manner, instead of resorting to the usual irrationalities or violence of the strike and the lockout. The board of conciliation for the district is the first body directly charged with this legal adjustment. Made up of representatives of employers and of employed in equal numbers, and a chairman chosen by these members, this board does not monopolize the field, as a special board may be chosen to take its place, with the same general powers. The conciliation board does not have

power to act on its own initiative; in other words, it has no right to compel both parties to appear before it. But if one party to a dispute wishes to refer it to the board, then the other party is compelled to appear. Here is the first appearance of compulsion in the matter. It is a logical step, if the state is to provide even rudimentary justice in this industrial field. In every other field covered by law a plaintiff can bring a defendant into court if his complaint is covered by a law generally binding.

The parties having presented themselves, the board proceeds to its peculiar business, trying to get the parties themselves in the first place to agree with each other on their relations for the near future. It excludes persons who make a profit from the professional conduct of litigation. Having all the powers of investigation possessed by the court of arbitration, except to order the production of books, it must seek as informally as possible to reconcile the two disputants. Large discretion is given to it in the choice of means "to a fair and amicable settlement."

If the parties are persuaded to come together in this peaceful atmosphere, they make an industrial agreement, and their controversy ends with a good prospect for the continuance of peace. If the parties do not come to an agreement, then the board goes on to make its recommendations in as untechnical a manner as may be, stating the kind of an industrial agreement that ought to be arranged. If both parties agree to abide by the recommendation of the board, before or after it is made, it stands with the full force of an industrial agreement between them, with such modifications as both parties have accepted. If, on the

other hand, either party refuses to accept the board's recommendations, it can refer the dispute to the court of arbitration for the whole country; in the absence of such an express reference, the recommendation is valid.

Thus far, then, the New Zealand law has but one feature of compulsion, in that one party can compel the other to appear before a board with large powers to investigate. When before the board, every effort is made to induce them to settle the dispute themselves. The only escape of the dissenting party is to a court whose verdict he must accept, from the very fact of his appeal to it. The more complete statement of the matter of compulsion is, therefore, that one party to a dispute can force the other into the path of a legal settlement, whether that path ends with the recommendation of the conciliation board, or goes on to the award of the court of arbitration. As a matter of fact, most cases taken before the New Zealand boards go on to the court for final adjustment.

The president of the court being a judge of the Supreme Court of the colony, it has the desirable dignity of a court of last resort; and the presence on it of representatives of both parties to the labor contract gives it a peculiar character, fitted to encourage confidence in the substantial justice of its decisions. It is, in fact, a combination of the legislative and the judicial elements of government in a novel way. The great power of the court over procedure and evidence must command general respect. It is one of the most authoritative courts of the time. The award may provide, as we have seen, for an alternative course to be followed by the parties, and it extends to the entire

industry with which the parties are connected, in the district to which the award relates. The court has power to limit the award, in this district, for good reason, with the ability to extend its application later, all in the interest of equity. In case of an award relating to a business in any district which has to compete with another district, and including a majority of the employers and workers in the trade, the court has the extraordinary power of extending its award over the entire country, so far as the industry in question is concerned. Such an award binds every worker in the industry, whether a member of a union or not, if his employer is bound.

The Court of Arbitration is supreme and final in all matters on which it passes, and it is the sole judge of the formality of its own procedure. Its power to fix the minimum wage in its award to rule throughout the trade, has great significance, as it thus places all competitors in the industry on the same level. Its ability to enforce its awards through courts of civil jurisdiction is apparently complete. The court's award stands on a level with the industrial agreements made at its instigation, both being considered as decrees of court.

The board and the court have the whole matter in charge, it is assumed, when a dispute is referred to either. It follows naturally that both parties shall keep on as they were before the dispute began; so work continues without interruption; and there is no disturbance whatever of the ordinary course of industry or of the public peace. Ample provision is made for the full enforcement of the spirit, as well as of the letter, of this part of the law. Other general provi-

sions relating to both bodies — such as those in regard to the employment of experts, contempt of court, publicity, and visiting the premises of an industry — are calculated to confirm the dignity of the judicial office in the eyes of the public, to round out its power, and to ensure the due carriage of justice without defeat by technicality or informality. One who studies these forty octavo pages of legislation cannot fail to be impressed by the thoroughness with which the New Zealand Parliament has fashioned its law with the one purpose of securing as just an award as can be expected from any tribunal in which both parties to the dispute are represented, and the balance of power between them is held by the most disinterested person to be found as the representative of the public, *i. e.*, a judge of the Supreme Court.

The testimony in regard to the operation of the New Zealand system of conciliation and arbitration that will have most weight with the judicious is undoubtedly that of the very competent foreign observers who have visited the country in the last five years. The list includes MM. Albert Métin and André Siegfried, of France; Mr. Henry D. Lloyd and Mr. Victor S. Clark, of America; Judge A. P. Backhouse, of New South Wales, and the Victoria Royal Commission of 1902–3. Mr. Lloyd's account in "A Country without Strikes" is probably the best known of these accounts, as it is the most eulogistic. Judge Backhouse's report has been generally "acclaimed" by friends and opponents of the system as the most judicial treatment of the subject yet made. M. Métin's is the least pronounced utterance; M. Siegfried's is the most critical. Mr. Clark's report

is the most recent, and one of the best; the Victoria Commission's is sympathetic, but not blindly eulogistic.

M. Métin[1] said in 1899: —

"Thus far the effects of official conciliation have been to prevent strikes and lockouts, and above all, to create a new jurisprudence, interpreting the old laws, or boldly innovating in favor of the trade-unions. We cannot insist too strongly upon the importance of this result" (p. 168). "We may say, then, that the boards and the court not only do a work of conciliation and arbitration, but, in addition, take inspiration from the first part of the (original) title of the law, in order to favor the development of industrial unions, and that this development through the very force of things is more favorable to the unions of workers than to those of employers. . . . The New Zealand law, like all laws on official conciliation, puts a premium on the organization of workers, and the premium is more advantageous than in any other country" (pp. 171, 172). "The intervention of the boards in matters of wages has been very well received by all the organizations of workers. In the two most important, the Trades Halls of Christchurch and Dunedin, . . . all agreed in finding an official decision, obligatory for one or two years, more advantageous to the workman than a private contract without sure guarantees" (pp. 174, 175). M. Métin declares (p. 176) that "all the employers are against the compulsory law of conciliation and arbitration. . . . The employers' associations have for their principal end protestation against the law and its interpretation. . . . Thanks, beyond a doubt, to the almost prohibitory duties, New Zealand manufacture has steadily developed since the

[1] Now a professor in the Parisian Municipal School Lavoisier. He was in Australasia from the last of April to the first of October, 1899. On his return he published a volume, the title of which neatly indicates the author's estimate of Australasian legislation, *Le Socialisme sans Doctrines.*

law was passed. In any case it does not cease to advance" (p. 177). In reviewing Australasian experience in conciliation as a whole, M. Métin learns three lessons: "That state conciliation and arbitration have no efficacy so far as they are not compulsory; that the employers are everywhere opposed to official conciliation, although many of them admit private conciliation; and that the workmen are favorable to official conciliation in New Zealand only" (p. 178).[1] "It seems certain that the workmen of New Zealand, in accepting the law with so much favor, have, most of all, thought of the encouragement which it gives to the industrial union. What they have seen in the law is less compulsory conciliation and arbitration than the means of rendering almost compulsory, first, the trade-union; second, the collective bargain between employer and union in place of the individual bargain between the employer and the individual workman; third, the introduction, for one or two years in this contract, of the custom of the trade, *i. e.*, of advantages persistently claimed by the unions and granted sometimes by the employers in exceptional and transitory conditions; fourth, the minimum wage, and the repression of the sweating system" (pp. 179, 180).

M. André Siegfried[2] is not a believer in the New Zealand arbitration law, but, like other visitors, he speaks, in 1900, of strikes as practically "unknown there since 1894. . . . The impartiality and good faith of the judges have never been doubted."

[1] The recent passage of acts modelled upon that of New Zealand by New South Wales and West Australia shows that the sentiment of workmen in these two countries has changed from observation of the workings of the system in New Zealand.

[2] M. Siegfried, a son of the distinguished French senator, M. Jules Siegfried, visited New Zealand in 1899, and early in 1900 published in the *Revue Politique et Parlementaire* an *Enquête politique, économique et sociale* on the country, of which Mr. Reeves says, "For a strong yet good-tempered criticism of the Progressive Movement in New Zealand nothing yet written comes up to M. Siegfried's series of criticisms."

The six paragraphs that follow are taken from Judge A. P. Backhouse's judicial report to the government of New South Wales.[1]

Generally the greatest satisfaction is expressed with the constitution of the Court of Arbitration, its proceedings, and its decisions. Some of its awards in certain particulars are found fault with; but this is ascribed to insufficient information before it, and not in any way to the court's failing to appreciate or not endeavouring to solve the difficult questions put to it. Its work fully bore out the expectations one would have of a tribunal presided over by a judge of the colony's highest court.

Undoubtedly differences have increased, and it stands to reason that in the ordinary course of things they would, when means are provided for dealing with disputes other than the extreme step of "striking" or "locking-out."

One of the things which struck me was the excellent relations which existed between employers and employees. I noticed this in the proceedings which I witnessed before a conciliation board and in the arbitration court; there the contending parties, although they were fighting their very hardest, appeared to be on excellent terms.

It is hardly necessary to point out that the act makes no attempt to insist on an employer's carrying on his business, or on a man's working under a condition which he objects to. All it says is that where a board or the court has interfered, the business, if carried on at all, shall be carried on in the manner prescribed; if the workman works, he shall work under the conditions laid down. There is nothing to prevent a strike in detail; nothing which will preclude a man from asking for his time and leaving.

Although I have gone fully into matters in which the act appears to be defective, I wish it to be clearly and unmis-

[1] Judge Backhouse is a district court judge of New South Wales. He spent some seven weeks in New Zealand in 1901, conducting an active investigation.

takably known that the result of my observations is that the act has so far, notwithstanding its faults, been productive of good. I have emphasized what were pointed out to me as its weaknesses, in order that they may be avoided should similar legislation be enacted here. The act has prevented strikes of any magnitude, and has, on the whole, brought about a better relation between employers and employees than would exist if there were no act. It has enabled the increase of wages and the other conditions favorable to the workmen which, under the circumstances of the colony, they are entitled to, to be settled without that friction and bitterness of feeling which otherwise might have existed; it has enabled employers, for a time at least, to know with certainty the conditions of production, and therefore to make contracts with the knowledge that they would be able to fulfil them; and indirectly it has tended to a more harmonious feeling among the people generally, which must have worked for the weal of the colony.

The able Victorian Commission of 1902–3 on the Factories and Shops Law journeyed through New Zealand in 1902. This passage is taken from pages xxiii, xxiv of its Report: —

Despite certain defects in detail, which have been revealed by experience, the New Zealand Conciliation and Arbitration Acts remain to-day the fairest, the most complete, and the most useful labour law on the statute-books of the Australasian states. And it is, on the whole, a wise social law, on the one hand protecting the fair-minded employer from the dishonest competition of the sweater, who keeps down the cost of production by paying miserably low wages, and, on the other, the toiling thousands, to whom a rise in wages of a few shillings a week when an industry can fairly bear it, often means the difference between griping poverty and comparative comfort. But, beyond that, it has the great merit of providing effective means for preserving unimpaired the industrial relationship

of employer and worker, in forbidding the miserable warfare which displays itself in strikes and lockouts, and the stern reprisals which too often accompany them, while ample opportunity is given for conciliatory methods of settling disputes before compulsion is invoked.

The law may fairly be said to have passed successfully through its period of probation. Its main principles have stood the test of time, and while employers and workers alike keenly criticise each other's actions in connection with its operation in certain industrial centres, in no part of the colony which we visited did we hear any general desire expressed for its repeal. Many suggestions were, indeed, made for minor alterations, but they were put forward with the view of improving the general administration of the act, while preserving its main principles in their integrity.

From the comprehensive report of Victor S. Clark, Ph. D., to the United States Bureau of Labor on "Labor Conditions in New Zealand" ("Bulletin," No. 49), I borrow the following matter:[1] —

The industrial conciliation and arbitration act of New Zealand has proved in operation an exceedingly powerful and comprehensive instrument for submitting private industry to public regulation and control. That in this respect the law has passed far beyond the original intent and anticipation of its founders is hardly to be questioned ("Bulletin," p. 1227).

While it is neither candid nor literally true to call New Zealand a land without strikes, no serious labor disturbances of this character have arisen since the arbitration law went into effect (p. 1227).

The true statement of the case is that, while there have been difficulties of this character, they have been as a rule exceedingly unimportant; they have not occurred among

[1] Mr. Clark was in New Zealand for some months in 1903; he is an expert investigator, who has had experience in Porto Rico, Cuba, and Hawaii.

workers directly subject to the act, and with the extension of the jurisdiction of the court through amendments to the law to cover allied industries and the increasing number of awards and the growth of organization among the workers, such troubles as have occurred are becoming more and more rare (p. 1228).

A second desirable result that the act is generally conceded to have accomplished is the prevention of sweating and undercutting by a few unscrupulous employers, to the detriment of the trade and the prejudice of the fair-minded majority who are content to conduct their business with reasonable regard for the welfare of their employees (p. 1231).

It would seem to an observer coming from outside the colony that the effect of the arbitration law upon industrial development and general business prosperity had been very greatly exaggerated by both its advocates and its opponents (p. 1235).

Opinion, therefore, is evidently divided, but workingmen as a class are in favor of, and employers as a class are opposed to, the present arbitration law (p. 1248).

Still, it is doubtful if there is an employer of importance in New Zealand who would return voluntarily to the system of strikes. They would amend and modify, probably entirely remodel, the present legislation, but they would retain in some form or other its essential principle. Public opinion in the colony has been cultivated into a position where it would hardly tolerate again a free fight between employers and employees. This feeling was voiced by a man of much local prominence, an employer of a large amount of labor under the act, and one of the most intelligent and consistently logical and dispassionate opponents of the present labor legislation met in the colony. At the close of the conversation he was asked: "Would you repeal the present laws in such a way as to make strikes the only ultimate method of settling industrial disputes?" He thought a moment, and then replied: "I was in Chi-

cago recently, when your building trades were on a strike. I saw armed men standing at the corners of your new Federal Building, there to protect the workmen from the strikers. No, I don't want to see a change of our laws that will permit of such conditions here" (p. 1248).

The law has not been a failure, though many inconveniences have been experienced from its workings. It has accustomed the community to the idea of making law supreme in industrial disputes, and this is an idea that will not easily disappear. With all its apparent defects the act is a success beyond the expectation of many of its early supporters. Practical legislators have considered it worth transplanting, with modifications not impairing its essential principle, to several of the states of the Australian commonwealth. There, meeting new conditions, many of them more similar to our own than those prevailing in New Zealand, the law is almost certain to be still further modified in practical application, and still more completely adapted to the diverse conditions of modern industrial life. One concludes an investigation with this conviction: that a line of legislation has been started in New Zealand to remedy one of our greatest industrial evils that will in all probability continue to expand and develop from its present tentative and experimental condition until it has solved, or greatly contributed toward solving, so far as the collective will of society can, the problem that brought it forth (p. 1255).

But few words need be devoted to the criticisms usually passed upon the New Zealand experience in legal regulation of labor disputes. The reports of Judge Backhouse, MM. Métin and Siegfried, Mr. Clark, and the Victorian Commission embody nearly all the criticism that deserves serious attention. The law is not perfect, and it will probably be amended in the future, as it has been in the past; the provisions for conciliation, in particular, need amendment. But the great

weight of competent and disinterested testimony as to the working of the law is on the favorable side.[1] The outstanding fact is plain: the New Zealand system of conciliation and arbitration has been a great success for eight years. It would be difficult to name a modern reform now in course of operation, which can command a body of testimony to this effect of equal weight, declaring the singular good fortune that New Zealand has enjoyed in the last eight years, in its freedom from strikes and lockouts, and preponderantly approving the system.

All these observers of the phenomenon point out the mistake that would be committed in judging it finally from good times alone. New Zealand, along with its conciliation and arbitration act, has had an unbroken period of great industrial prosperity. State regulation of labor disputes has at least not been powerful to prevent, however much or however little it may have caused, this state of things. In these years the large majority of applications to the boards and the court have come from the workers, demanding higher wages or some improvement in the conditions of their industry. As a rule, the awards have been favorable to them, and the friendly feeling of the workingmen

[1] The majority of the objections now made are trifling in their character, or the result of misunderstanding or ignorance. Others of a more important character proceed from persons like Mr. John MacGregor and Mr. F. G. Ewington, who seem to be political partisans or determined advocates of a theory thoroughly hostile to "state interference," rather than candid students of things as they are. Mr. Reeves, as the author of the New Zealand act, may naturally be suspected of partiality for the work of his own hands; but no candid reader of his two recent volumes on *State Experiments in Australia and New Zealand* can put them down without a feeling of admiration for his talent and his candor.

toward the act is not surprising. The really surprising phenomenon is the gradual conversion of the employers from their formerly general opposition to the law. As to the thoroughness of this conversion various observers differ; but as to the reality of a strong tendency in that direction, there is no reasonable doubt. The employers are probably undergoing conversion as rapidly as could well be expected in the case of so novel a law. The other directly interested party (the workers) is cordial in its endorsement of the act. The New Zealand public enjoys a happy freedom from labor troubles.

A question of prime interest is, What will the workingman say and do when hard times come again, as come again they must, however long deferred their coming, and the court of arbitration grants the employers reductions in wages and other concessions? Will the workingmen then make trouble, cancel their registration as "industrial unions," and agitate for a repeal of the law? No one has a right to speak dogmatically on this point, least of all any one outside of New Zealand. But several considerations encourage belief in the good sense of the New Zealand artisan in time of adversity. The longer prosperity continues, the less will be the probability of trouble arising from the labor side in hard times, after it has enjoyed a long and uninterrupted period of favor from the arbitration court and the conciliation boards. There seems to be no good reason for fearing an early occurrence of a crisis. The system which has now had eight years of continuous success would be all the stronger for several years more of similar prosperity. In such a period the employers would probably discontinue most

of their opposition. Then there would come, it may be, several years in which the strain of accepting unfavorable awards from the court would fall upon the workers. I prophesy with diffidence; but I firmly believe that the distribution of good sense and fairness of mind among intelligent English-speaking men is tolerably uniform in the employing and the working classes, and, so believing, I anticipate that the present friendly attitude of the workers toward the law will be paralleled by the attitude of employers, and that there will be a substantial acceptance of the system by the workers when in turn it operates mainly against them. It must be remembered in any such prognostications, that times of adversity mean lower wages for the artisan and the mechanic in any case. The important matter is that they shall be convinced, by authorities in whom they have confidence, that the reduction is reasonable under the adverse conditions of industry. The authorities who will hereafter reduce wages in New Zealand will not be the employers, but, for the first time, the court, the same power that has been raising wages steadily for some ten years, say, if not longer. Such authorities the workers will probably trust and accept, rather than seek the harsh and irrational arbitrament of the strike. Ten years altogether of education in good times will surely not be without great effect upon workers who must face the facts of bad times, many applications to the court from employers for a reduction of wages, and numerous adverse awards by a court which they have been admiring. The population of New Zealand is 95 per cent. English; free education is universal and intelligence is general. Under these favorable auspices it seems more probable that legal

regulation will still be a success when hard times prevail, than that it will go down before the unreason of the workingman possessed by a policy of "Heads, I win; tails, you lose." It is sufficiently evident that the working classes of New Zealand have the fortunes of the act in their hands. If, when fortune turns, they yield as gracefully as possible to the pressure which the employer, the court, and public opinion join in bringing to bear upon them to accept adverse awards, they will confirm the wisdom of the policy of state control of labor relations, establish it deeply at home, and help powerfully to introduce it abroad. But if they adopt the line of unreason and blind resistance, the law may be repealed and their last state be worse than their first, before legal regulation came in. But as Judge Backhouse has said: "Whatever may be the result, the world owes a debt of gratitude to New Zealand for having undertaken the task of demonstrating whether it is possible or not to settle industrial troubles by compulsory arbitration." [1]

[1] West Australia adopted an act similar to the New Zealand Conciliation and Arbitration Act, in December, 1900. New South Wales passed a bill toward the end of 1901, which provided for an Arbitration Court only, omitting boards of conciliation. The registrar can bring both parties to a labor dispute before the Arbitration Court on his own motion. The act thus goes a step farther than New Zealand in legal regulation. In 1902, 112 employers' associations were registered under this law and 98 unions of employees, numbering over 50,000 workers. Victoria and South Australia have wages boards which go a long way toward the New Zealand system; and the Victoria Royal Commission of 1902 on the Factories and Shops Law recommended the formation of courts of conciliation and an arbitration court. A bill applying legal regulation to the whole Australian commonwealth is pending in the Parliament.

In addition to the works already named in this chapter the following may be consulted with profit: Mr. Reeves' *The Long White Cloud*

(the Maori name for New Zealand), 1899; *Australasian Democracy*, by H. DeR. Walker, 1897; *Les Nouvelles Sociétés Anglo-Saxonnes*, by Pierre Leroy-Beaulieu, 1901; *The Story of New Zealand*, by Frank Parsons. Sidney Ball, in the *Economic Review* for July, 1903, reviews Mr. Reeves' *State Experiments*. The Report of the Victorian Industrial Commission is summarized by Mr. A. F. Weber in the *Quarterly Journal of Economics*, August, 1903.

The ablest criticisms of the New Zealand system may be found in a short article in *United Australia* for November 25, 1901, by the Hon. W. P. Cullen, and a pamphlet by J. MacGregor, reprinted from the Otago *Times*, 1901 (a reply to this was reprinted from the Otago *Liberal and Workman*, in 1902). The "Liberty Review" Publishing Company of London issues a sixpenny pamphlet, *The Truth about the New Zealand Act*, by F. G. Ewington and others. *Labor and Capital*, a volume edited by J. P. Peters, contains articles by Walter Fieldhouse, H. D. Lloyd, Conrad Reno, and H. H. Lusk in favor of "compulsory arbitration;" and by C. D. Wright, S. Gompers, E. E. Clark, John Mitchell, and J. M. Stahl in opposition. Judge M. F. Tuley's address before the Illinois State Bar Association in 1902 favors incorporation of trade-unions, but opposes such arbitration. Among earlier discussions may be named an article by Lyman Abbott in *The Arena* for December, 1892, and one by Frank Parsons in *The Arena* for March, 1897, favoring, and one by C. D. Wright in *The Forum* for May, 1893, opposing, state arbitration.

The *Awards, Recommendations, Agreements, etc.*, made under the New Zealand Act are now published in annual volumes by the Department of Labour (vol. i. contains the record from August, 1894, to June 30, 1900). The Journal of the Department, issued monthly, prints these awards first. See also the very cheerful Twelfth Annual Report of the Department, for 1902–1903.

The New South Wales Act of 1901 was expounded and defended by the Hon. B. R. Wise, Attorney-General, in the *National Review* for August, 1902. See his able speeches on the system in the colonial *Hansard* for 1900 and 1901. The *Industrial Arbitration Reports and Records* to August 5, 1903, have been published in eight parts. The Act has been printed in the *Bulletin of the Department of Labor*, No. 40, May, 1902, and in the Fifteenth Annual Report of the New York Board of Mediation and Arbitration, which also contains Judge Backhouse's report.

CHAPTER XV

THE CASE FOR LEGAL REGULATION

The question whether the state shall take in hand the settlement of labor troubles is obviously a question of degree. In answering it, we do well to begin with matters on which all agree, and go on to others that gradually become more questionable. In all strikes the duty of the government to preserve order and to put down violence, under whatever pretexts it is employed, is primary and indisputable. That the state should encourage the formation of industrial unions by giving them legal status, so that the agreements of employers and workingmen shall be binding upon both parties is, as we have seen, very advisable. How far it should compel the parties to make collective bargains, under penalty of deprival of the right to follow the business and do the work under previous conditions, is the practical issue.[1] We have further seen that railways and other corporations supplying public utilities should be brought under rules compelling them to compose their labor troubles with their employees, through either voluntary or state boards of conciliation and

[1] "So long as workmen claim a right to hold their places and actually protect them by irregular force, there is no escaping from the conclusion that society is called to adjudicate that claim and to enforce it in the cases in which it is to be enforced at all." — Professor John B. Clark, "Is Compulsory Arbitration Inevitable?" in the volume entitled *Employers and Employees*, issued by "Public Policy," Chicago, 1902.

arbitration. The modern state already does so much in the way of regulating the charges and general conditions of railways, for instance, that the additional step of regulating their labor disputes, so that they may be ended speedily and fairly, could be taken with comparative ease. "The people have a right to continuous service."

When a monopoly is so evident as in the case of the supply of anthracite coal in Pennsylvania, the regulation of disputes in the interest of the public is, beyond question, a sane measure. In the settlement of the great strike of 1902 two very important factors were an indignant public and a public-spirited President. The compulsion of law (which is the expression of permanent public opinion), acting regularly in any future cases of like troubles, would be accompanied with much less friction and injury. The recurrence of such a disgraceful situation should, of course, be rendered impossible. Peoples given to opportunism, like the Americans and the English, will most probably attempt to solve the problem of industrial peace in the tentative fashion thus indicated. They can safely experiment in a limited field, while observing the later experience of New Zealand and Australia on a larger scale.

The question of a fundamental principle will not be dismissed, however, and we may well discuss it briefly. The principle sought appears in the fact that one of the surest tests of the civilization of a people is the amount of its subjection to law. In proportion as law covers the actions of individuals and associations, defining what they shall do and what they shall not do, with the aim and the result of insuring the largest

possible welfare to all, is a country civilized. "Only law can give us freedom." The New Zealander in Wellington or Dunedin, subject to a common rule of the Court of Arbitration applying to the whole colony, is far more free than the American in Chicago or St. Louis who must be protected by United States troops in his right to work or to employ workers. The New Zealand employer's old idea of the individualistic conduct of business has suffered much modification, but he stands now on an equality of conditions with all other employers; the just hand of the law is over him to direct and to protect him impartially.

It is plain that New Zealand has gone farther on this road of state regulation of industry than the framers of its arbitration law foresaw. It has been drawn on inevitably to meet the developments of the situation as they arose. The farther the New Zealanders have travelled toward the fixing of wages and conditions by courts in all occupations, the more desirable is it that other countries should wait and profit by their experience, in bad times as in good times. But the success of the system thus far should not be denied or minimized by candid men. It has been great and undeniable, and a multitude of *a priori* objections to such a law have been swept away by the simple fact of its persistent and happy operation for eight years.[1] Such a concrete instance is of far more worth than

[1] The fixing of wages by an arbitration board, for instance, has been shown to be a very different matter from the fixing of them by a justice of the peace or by an act of Parliament. Traditional objections to determination of wages by other persons than the two parties chiefly concerned need revision in the light of experience. All arbitration, in the broad sense, takes this matter out of the hands of the two parties. The important point is the competence and fair-mindedness of the court.

volumes of theorizing. The success of New Zealand in the legal regulation of labor disputes is undoubtedly the chief practical argument to-day in favor of the extension of the general principle to other countries. The method can no longer be pronounced impossible under any circumstances.

The chief present duty for other countries in this matter is to understand what New Zealand has done. If what that country has done cannot well be closely imitated by other countries, because of their greater size and population and the complication of their industries, they cannot put by the fundamental question whether the labor troubles so characteristic of our time should not be brought inside the realm and power of law. Too evidently, the policy of allowing trade-unions and employers a free field for their warfare, while the public looks on and suffers, cannot be permanent with an enlightened people. Such a people will soon refuse to be misled or alarmed by such phrases as "compulsory arbitration," used as sufficient argument to demolish the proposal to apply judicial procedure to industry. The settlement of a great strike or lockout in the usual blundering fashion cannot claim to be rational or judicial in any such sense as is the award of the New Zealand court. No other system of state arbitration has been sufficiently comprehensive or effective. Trade arbitration has not covered all the trades, nor does it appear likely to do so. The successful efforts of individuals, of bodies of employers and workingmen, and of public-spirited citizens should naturally pave the way for a permanent policy of public control. The issues in a modern country that most need a stringent application of reason are labor disputes,

and "the law is perfection of reason." The powers now in the hands of the New Zealand Arbitration Court are very great, but they have been wisely and fairly used, and the judge-made law of its decisions has been an important contribution to the equity of industry.[1]

It is not to be expected that such courts will discover any substantially new or theoretically perfect grounds for fixing wages. Custom, supply and demand, the conditions of the market, the cost of living, the productivity of labor, the standard of life, the general prosperity or adversity of the community, — these and other factors will be taken into consideration.[2] Witnesses will be summoned in abundance, and the judgment rendered will be in accordance with experience and observation. It will be rendered by men not likely to lose out of sight the bearing of their decisions upon the welfare of the whole country. Their opinions will be competent and disinterested opinions.

If the awards of such a tribunal (assisted, of course, by experts in special cases, to any needed extent) should not be respected by the public, that public would seem to stand much in need of education! The state of mind of the general public is, indeed, the chief

[1] I believe that the constitution of such courts would be better if they were somewhat larger and the members somewhat differently chosen. A bi-partisan method of selection is unadvisable, whatsoever the parties are. A court of five impartial men would be better than a court of three. If it were made up of a judge of the Supreme Court, a retired employer, a retired merchant, a former official of a trade-union, and a professor of applied economics, — all men of experience, of broad views, and moderate spirit, and in full vigor, — its decisions, which would probably be for the most part unanimous, should command general assent and respect.

[2] See M. Levasseur's *L'Ouvrier Américain*, part i. ch. xi., for one of the best statements of the complex causes that regulate wages.

factor in the success or failure of such a system. The gradual creation of a public opinion in favor of the legal regulation of labor disputes is not an impossible thing in the not very distant future of English-speaking countries. Now that full and trustworthy reports from New Zealand are increasing in number and in weight, there will soon be no excuse for misunderstanding or misrepresentation of the operation of its conciliation and arbitration system. So much stronger is the testimony in favor of it, as a success, than against it, as a failure, that a candid person who has gone through all the accessible material for judgment can hardly doubt on which side the verdict of the public and of students will fall. It is significant that English trade-unionists like Mr. Tom Mann, who have been to New Zealand, return warm advocates of it; such increasing evidence before many years may bring the unionists of Great Britain into agreement with those of Australasia in a friendly attitude toward the system.

Neither England nor America is ready for the introduction of the New Zealand plan: the warmest friends of it should be the last to wish it tried at once, if possible, in an uncongenial environment. And it may be that some better practical method for the solution of industrial disputes will be beaten out of experience. Nothing is gained by minimizing the importance of the arguments against the plan now in effect on the other side of the globe. It involves a great change in the habits of mind of employers and of employed as well, to give up their "rights of free contract" to the extent demanded; to surrender their "liberties" to submit to law and reason or not, as they please. The powers in the hands of the judges of the Arbi-

tration Court are unprecedented, and it is natural to declare that they will certainly be misused. But experience does not tend to confirm these prophecies. The conservatism of the New Zealand court thus far seems to indicate that a body with such vast powers, and so free in its procedure to follow equity more than technicality, will be sobered by its responsibilities, rather than intoxicated by its authority. Every such court will make mistakes, but it will also be able to undo them soon. The number of errors that it will commit is likely to be small by the side of those into which voluntary arbitrators would fall. As the system increases its years of life, its lines of operation will become better defined. A large body of precedents will be established, and the tendencies to wise and conservative decisions be confirmed.[1]

The legal regulation of labor disputes may be "a half-way house to socialism," as some have called it. If so, it may be found to be as far in that direction as mankind wish to go for a long time, if not permanently.[2] "Socialism" should not be employed as a bugbear to deter sensible men from taking practical

[1] "As between courts and mobs we are relying on mobs, but this is only because we have not ourselves proved the efficacy of courts. The evidence is in favor of their efficacy, and there is little doubt that we shall ultimately have them." — Professor John B. Clark on "Authoritative Arbitration," in the *Political Science Quarterly*, December, 1902.

[2] "Now that combination is everywhere displacing competition, alike in capital and in labor, the old *laissez-faire* individualism is perforce abandoned, and state compulsory arbitration is accepted as the most practicable compromise with the spirit of socialism. The objections of economic and political theorists are not likely to prove formidable obstacles to its adoption." — Mr. John A. Hobson on "Compulsory Arbitration in Industrial Disputes," in the *North American Review*, November, 1902, p. 599.

steps toward palpable relief from intolerable situations. It is not necessary, because I go halfway toward the Pacific Ocean, that I shall continue my course until I am drowned in it!

The whole problem of the regulation of monopolies is involved in the attempt to regulate labor troubles.[1] It is *the* modern problem in the industrial world. In solving it we shall probably have to put by a number of venerable prejudices and a considerable stock of worn-out ideas, no longer fitted to their environment. In this not-too-comfortable process of readjusting our theories to the actual developments of modern industry we shall owe a great debt to those who have experimented before us, and so have diminished the possible number of painful endeavors that we must make in the dark. The thanks of the civilized world, sorely perplexed by industrial warfare, should go out to the courageous community in the southern seas that is experimenting with so much vigor and straightforwardness. New Zealand is not, indeed, legislating for the world, but for herself, as Anglo-Saxon countries have a wholesome habit of doing. Her permanent success in the legal regulation of labor disputes would not imply that other countries far remote should hasten to copy the details of her legislation. Her lesson to the world should rather be: Extend the borders of Law until they include the making of peace between the workman and the employer; let the sovereign law of the land regulate industrial disputes, as it regulates all others!

[1] "Trusts have made strikes injurious and dangerous, and may soon make them uneudurable." — John B. Clark.

CHAPTER XVI

ESSENTIAL CONDITIONS OF INDUSTRIAL PEACE

The first essential to abiding industrial peace in the modern world, as we have seen, is a recognition by employer and workingman of the conditions which actually prevail. These conditions are entirely incompatible with the old-style individualism of the employer. The modern employer should frankly adjust himself to the industrial developments of the last hundred years. He plumes himself, in fact, on keeping in touch with these developments so far as they affect his own order. He is quick to recognize the desirability of combinations of manufacturers and dealers. He needs, then, to dismiss from his mind the thought that it is for him to say to his workingmen what they shall do about combination among themselves. They have as much right as himself to avail themselves of the help which comes from association. It lies on the very surface that they need association more than the employer does, to secure their rights and privileges. The modern employer must not think that he is to "tolerate" or "allow" his workmen to combine, as an act of personal amiability. The association of workingmen is one of the primary facts to which he must adjust himself, and he must be prepared to accept without hesitation the natural consequences of such combination. He must, for instance, be ready to deal with the representatives

of such organizations of laboring men, whether they be called "walking delegates" or "business agents."

Trade-unionists must likewise frankly recognize modern conditions. They should cease to denounce trusts with the perfervid rhetoric so common in labor literature. Claiming the fullest right of association, they should be prepared to deal logically with employers exercising the same right. They accept the principle of association so far as it gives them rights and privileges. They should accept equally the duties and responsibilities involved in such a method. They should become incorporated bodies, that they may be able to deal on equal terms with combinations of employers. If trade-unionists are sincerely afraid that incorporation will expose them to persecution in the way of litigation for damages, they might at least reconcile themselves to incorporation for special purposes, — mainly for the purpose of forming trade agreements with employers' associations, for which both parties could be held legally responsible.

Trade-unionists should recognize the economic reasons which require that improvement in the condition of workingmen shall be gradual. They must not expect the progress to be by gigantic strides. The trade-union is but one party out of three to every such matter as an increase of wages or a shortening of the working day. The capitalist-employer is a person whose activity must not be hampered, if the standard of living is to rise through an increase of wages. The public, most of all, is not to be hindered in the largest consumption possible, by any alliance between the workingman and the capitalist-employer which shall unduly increase the price of the necessaries or the

comforts of life. Increase of production is the required antecedent of any considerable increase of wages, or other important improvement in the lot of the workingman.

If both parties fully comprehend the advantages of combination and become incorporate, they will be prepared for the fullest measure of collective bargaining, which is the inevitable consequence of such organization. We have seen the wide prevalence which collective bargaining has attained in America and England. Whether such bargaining carries with it the sliding scale or not, the tendency will be to adjust wages and profits according to market price.

Most of the ideals cherished by trade-unions are substantially realizable in time. The movement for a shorter working day is gaining in strength as more and more examples show the feasibility of reducing the day's work in many occupations from ten hours to nine or eight, without decrease of wages. In all directions workmen have had an increase of wages in the last generation. Factory legislation has been steadily bringing up the sanitary conditions of modern factories to the strictest demands of reformers. It will probably be impossible, under any scheme of production, to avoid a large amount of monotony of work. This is not a hardship peculiar to the factory, however. But the unceasing effort of modern man is to transfer monotonous labor to machinery so far as possible. As Professor Alfred Marshall has pointed out, the great evil is not monotony of work, but monotony of life. If the life of the workingman outside of the factory can be cheered and brightened and uplifted, the main point is gained. When the eight-hour day

shall have become general in the mass of occupations, the question will naturally arise if it is to be considered the possible minimum. The writers on Utopia have easily answered such questions. Sir Thomas More reduced the hours of daily labor to six in his ideal commonwealth. Mr. Herbert Casson declares that four hours a day will soon be sufficient. But these prophecies are evidently not based on the statistics of production and increase of population. The practical question for our generation is the question of the day of eight hours, not of six or four. This short-time working-day is certainly one of the ideals of the trade-union most immediately realizable.

But the ambitions of the far-sighted employer are to be realized as well. Production must be increased to give him a large return and allow trade-union ideals to be attained. The modern employer dreams of a continued increase in the mass and improvement in the quality of his product. He is constantly substituting complicated machinery to save the labor of the human being in all directions. He is continually devising new economies in the processes of manufacture, and the modern "trust" has opened a whole new world of by-products leading to profits undreamed-of before.

In order that production may reach its highest attainable level and the workingman's condition improve according to his aspirations, it is plainly necessary that modern manufacturers should understand and practise the economies of conciliation. Every shop, factory, works, mill, or foundry should have, in itself and for itself, provisions for committees which shall immediately take cognizance of all minor difficulties arising

in the ordinary course of work, as in the Massachusetts shoe trade. These conciliation committees will settle amicably and quickly by far the larger number of disputes, some of which would otherwise become formidable. Their work might well be supplemented by such a system of suggestions as the National Cash Register Company, of Dayton, Ohio, has satisfactorily practised. Such a system brings quickly to the attention of the employer the numerous ideas which occur to intelligent workingmen looking to the improvement of the discipline or the processes of manufacture.

A point of the first importance is that every collective agreement between employers and employed should contain a stipulation that, in case disputes arise under the agreement, resort shall be had to some species of arbitration. This general provision for arbitration is much better than exceptional resort to it. The interpretation of any feature of the collective bargaining could be referred by rule to a board of arbitration in the trade, or to a State board. In this way a very large number of greater or smaller difficulties would be settled with ease, the industries having been fully equipped with the needful machinery of conciliation and arbitration.

If such committees and such collective agreements were universal, strikes and lockouts would largely disappear. There would then be little need of discussing the theoretical right of the employer to lock out his men or of the workmen to strike. There would be an increasing and prevailing conviction of the unreason and the practical futility of such steps. We are not to anticipate that wide divergences between the employer and the employed, as to wages and hours and

other conditions of work, will immediately vanish with the general introduction of such machinery for industrial peace. The fundamental phenomena of bargaining will continue so long as men have any need of exchange, especially in the sale and purchase of labor. The Book of Proverbs (xx. 14) described this process once for all: "It is naught; it is naught, saith the buyer, but when he is gone his way, then he boasteth." So long as human nature continues substantially what it is at present, we may expect such lack of harmony in the views of men as to the worth of things or services. But everywhere else in the modern world the buyer and seller come peacefully to an agreement in the end. So it will doubtless be more and more the case in the matter of the buying and selling of labor. Violence and unreason will gradually disappear, giving place to a peaceful "higgling of the market."

Dogmatic prophecy as to the place that the trade-union will hold in the future is very unsafe. One may, perhaps, anticipate that with the increase of industrial peace the benefit features of trade-unionism will be more in evidence; that this side of its work, becoming more prominent, will attract many workingmen who now remain outside of the organization. The beneficiary funds of the trade-unions will be more secure through incorporation, and might be freed from calls for meeting the expenses of strikes. The trade-unions would then be able to compete to more advantage with strictly beneficiary societies on their own ground. Under such circumstances it would seem to be the part of reason for non-union workingmen to join the unions freely. The experience of England indicates that trade-unions may look forward in this country to a great increase in

their numbers, until they shall embrace the majority of skilled workmen. Nothing could be more conducive to such a prosperous future for trade-unionism than such a policy of industrial peace as I have outlined in this volume.

If, on the other hand, the unions and the employers will not generally accept the method of adjusting their disputes themselves, through trade agreements and trade conciliation, or resort freely to external voluntary agencies like the National Civic Federation, or to State boards of arbitration (their present constitution could be much improved), then public opinion will doubtless demand the introduction of some such system as that now in force in New Zealand. No self-respecting society can hesitate long as to its choice between a régime which allows strikes like those of Homestead in 1892, of Chicago in 1894, of Cleveland in 1899, of Albany in 1900, or the coal strike of 1902, to be repeated indefinitely, and a régime of strict regulation of labor disputes by law. If the two great parties to labor conflicts will not come to a substantial agreement themselves, they must be sternly taken in hand by their superior, *i. e.*, the general public, through its courts of law, and be made either to agree or to quit business. They must make way for other persons of a more reasonable disposition, or for government ownership.

The anarchy of such individualism as was advocated by President Baer of the Reading Railway during the recent coal strike is not consistent with modern civilization. The only "infinite wisdom" of God in which reasonable men can believe is the wisdom of a God of reason, demanding that employers and employed shall

adjust themselves to modern conditions. It would certainly show little wisdom on the part of finite men to allow great and important privileges to continue the perquisite of those who show little or no respect for the public welfare. Actual ability to do what they are incorporated to do will be sternly required of all who enjoy great franchises.

The trade-unions cannot too often remember that the power of the modern employer is one not to be taken away by them. They must realize that strong and competent men, able to manage great undertakings and thus keep workingmen at work, will not submit to senseless dictation or unjust conditions proceeding from "organized labor." When such an unwise policy is employed by workmen, there will be a sure revenge in the discontinuance of the business, throwing them out of employment for an indefinite time. The gradual decline of manufactures in any country where such practices long continue will drive home the folly of such a course.

For myself, I have great faith in the essential reasonableness of American employers and workingmen, and in the power of such reasonableness to bring about substantial industrial peace. The American workingman I believe to be a person in whose good sense, in whose desire to do the right thing and the fair thing, we may have large confidence. The American workingman is willing to live and to let live. But he needs, for one thing, a better training in the elements of economic science. Common school education should be so revised that some tuition in these matters shall be given before the boy gets out into the world as a worker at fourteen or sixteen. The American work-

man also needs to be disillusioned concerning the benefits of tariffs and high protectionism. It is as important to his welfare to raise the purchasing power of wages as it is to raise the nominal amount of them.

I have an equal faith in the substantial desire of American employers of labor to do justice to their employees. They have been too much carried away lately by the temptation to abuse their opportunities of industrial combination; but, as authoritative writers tell us, these abuses will correct themselves as experience teaches the folly of too many of the methods practised in the last few years. When once the trusts are rightly adjusted to their environment they will probably deal more generously with their workingmen than does the average employer under the competitive system.

I have still more confidence in the good sense and reasonableness of "the public" as the final tribunal before which all disputes in the industrial world must be brought, directly or indirectly. I have great trust in the power of public opinion to force both parties in labor troubles to adopt reasonable policies. The coal strike of 1902 was a forcible instance of this power, however late it was in rousing itself, and however little one would recommend such a policy for a permanency. It needs little insight to see that the public in America has been actively concerned with the question of preventing a recurrence of such troubles. I have no doubt that public opinion will reach the point of attempting the policy of legal regulation of labor disputes, if employers and workingmen do not, in the next few years, greatly improve upon the record of the last few. Such confidence as I express has been justified by the his-

tory of the American people. It is impossible for a great democracy to extemporize a policy for the regulation of railways, or of trusts, or of labor disputes, that shall do justice to all the persons involved. Great loss will be incurred and great injury suffered before scientific policies are developed, but that they will be gradually attained I have little doubt.

I would not close this volume without giving fuller expression than I have thus far done to my appreciation of the profoundly humane character of the trade-union movement in its best aspects. In various places I have pointed out the dangers to which the unionist is exposed when he takes his trade-unionism very seriously. I would like to point out in closing some of the good features in such an attitude. The labor movement has enlisted the allegiance of workingmen of the highest grade. Many of them, for weight of character and solidity of mind, have no superiors among the professional or business classes. They are men of whom any country might well be proud, as one of its finest products. That serious and public-spirited men, in many cases indifferent to anything like religious conventionalities, should practically make trade-unionism their religion is not strange. Religion means very little if it does not mean something in which we profoundly believe, and which commands our willing and devoted service. If religion is the supreme earnestness of life, any movement to which we give our whole heart may become our real faith. I see in the trade-union movement a reaching out for a higher and larger life, — a life fuller, deeper, and finer, for the vast majority of mankind. As the abolition movement of the nineteenth century in the United States was practically a

religion for numerous highminded and devoted men and women who embraced it; as coöperation in England and on the continent of Europe is a faith and a code of morals to thousands of skilled artisans and to men of high education not a few; as the Union and States' Rights were vital religions to the North and the South in the time of our Civil War, so trade-unionism, or the labor movement, may become — it is, in fact, for the best spirits among workingmen — a real religion of humanity. I have considered the phenomena of trade-unionism on economic grounds chiefly, but these higher aspects of the movement may not be permanently neglected by any one who is aware of the supreme importance of spiritual and moral influences even in a profoundly material civilization. Whatever practically constitutes a religion of humanity for hundreds of thousands of our fellow-men is not to be considered as thoroughly treated if handled on purely economic principles. We have here a movement of a vast mass of people, deeply impressive in its claim for a truer and nobler justice than has yet been realized. What they are calling for is essentially a greater opportunity to develop as human beings; a larger share of the finer and higher life which civilization is extending among men. The thoughts and aspirations of the real leaders of trade-unionism are not confined to the necessary material conditions of the higher life. They have a true moral enthusiasm. I do not desire to be numbered among the mere critics of a movement so important and inspiring. I wish to be counted among the true friends of its ideals, among the firm believers in its fundamental doctrine of the elevation of the working classes. Such friends and believers see the dangers into which

fervent religionists are apt to fall. In the intensity of their enthusiasm and devotion to their own body the religionists of unionism become very unjust to other men, — narrow in their view of the entire meaning of society, prejudiced against much of the best in that society, suspicious of their wisest counsellors outside their own movement, and addicted, above all, to a bigotry quite able to check the advance of their movement, even as religious bigotry has retarded pure Christianity more than all the persecutions it has ever suffered. The treatment of non-unionists by unionists reminds one too often of the worst persecutions which sects and churches of the past have carried on. Only by greater faithfulness to a spirit of reasonableness will trade-unionists convert the great body of non-unionists to their policy for improving the condition of mankind.

Trade-unionism may have a great future before it. I would fain see that future marked by a deep sense of responsibility for large power and by a temperate employment of it for the good of all classes. The one primary truth of morals must become more clear to the trade-unionists, as to other reformers, — that all are parts of one great whole. Trade-unionism is held as one factor in the mighty common life of society. Let it be enlightened, wise, and reasonable. Then it will approve itself to the public, and become more and more a chosen instrument for bringing in by slow degrees, but with perfect sureness, the reign of industrial peace.

APPENDIX I

EMPLOYERS ASSOCIATIONS

Rules of the National Association of Master Builders of Great Britain, established in 1878 (Head Office in Liverpool).

To defend the interests of its members against combinations of workmen seeking by strikes or other actions to impose restrictive conditions upon the building trades; to secure united action and mutual support in dealing with demands made by such combinations, especially with reference to hours of labour, piece-work, overtime, employment of non-union men, apprentices, use of machinery, etc.; to provide for the equitable arrangement of all differences between workmen and employers in the trade; to obtain the recognition by architects and others of a fair and equitable form of contract between builders and their customers; to establish branches of the Association, and to raise a common fund for carrying out these objects.

The general business of the Association is managed by an Executive Council, consisting of a president, two vice-presidents, a treasurer, and twenty-one other members, elected annually. There is also a paid secretary.

Meetings of the Association take place half-yearly, and at such other times as the president and vice-president deem necessary. At each half-yearly meeting it must be decided when the next one shall be held, and it is desirable that the place of meeting be changed from town to town so that the convenience of the members may be equitably met, and the interest in the Association more immediately felt in various districts. Each branch Association with thirty members or less is entitled to send two representatives to the half-yearly meetings, and each branch Association with more than thirty members is entitled to send an additional representative for each additional thirty or portion of thirty members.

All questions before the Executive and the half-yearly meetings shall be decided by a majority of votes of the members present at such meetings; the representatives of branch Associations to be entitled to the number of votes warranted by the number of members of the branches. In case of equality of votes, the chairman shall have a casting vote.

Rules may be altered or added only at a half-yearly or special gen-

eral meeting called for the purpose, and after at least one month's notice has been given in writing to the secretary, stating in full the nature of the proposed rules or alterations. The National Association must at once forward a copy of this notice to each branch.

The Association is a Union of local associations connected with the building trades throughout the country, and of such individual members of the trade as are not members of any local association, and are elected by the Executive Council. No person residing in the neighborhood of a local association shall be elected a member before the latter has been consulted.

The annual subscription from each local association is according to a graduated scale, ranging from 2*l.* 2*s.*, for associations with not more than five members, to 15*l.* 15*s.* for those with from seventy to one hundred members, and an additional 5*l.* 5*s.* for every additional fifty or portion of fifty members. The annual subscription for individual members is not less than 1*l.* 1*s.*

The Association shall assist the local associations in time of strikes by such means as may appear desirable. The secretary shall bring the influence of the Association to bear throughout the country in order to counteract any local or general strike.

On notice being given by the operatives for increase of wages, or shortened hours, or other alterations of working rules, the secretary of the branch association in whose district the demand is made must at once communicate with the Executive Council and also with the other branch associations.

It shall be the duty of each branch association to forward every month to the secretary a report of the state of trade in the district.

The secretary must receive all subscriptions and other moneys and pay them into a bank to the credit of the Association. Money must be withdrawn from the bank by cheques signed by the president and treasurer for the time being.

Extract from the Rules of the Iron Trades Employers Association (revised in 1888).

Any demand affecting the general interests of employers made on any member shall be referred by him to the Committee of Management, which shall make such recommendation or direction as it may deem expedient. The Committee, or a special general meeting, may recommend support from the common fund in resistance to a strike or other combined action; suspension of overtime; any lawful conditions as to the conduct of the business of members necessary to meet unreasonable or injurious demands for diminished hours, minimum rate of wages, dismissal of any workman, employment of men or boys, or other unreasonable requisitions; and any subsidiary measures in furtherance of the objects of the Association. When further pro-

tective measures are needed, the Committee may organize and direct the voluntary coöperation of any members who agree upon a lawful mode of action to avert or settle disputes.

EMPLOYERS ASSOCIATION OF DAYTON, OHIO.

Here follow the most important portions of the constitution and by-laws: —

ART. II. SEC. 1. The objects of this Association are: —

First — To protect its members in their right to manage their respective businesses, in such lawful manner as they may deem proper.

Second — The adoption of a uniform legitimate system whereby members may ascertain who is, and who is not, worthy of their employment.

Third — The investigation and adjustment, by the proper officers or committees of the Association, of any question arising between members and their employees, when such question shall be submitted to the Association for adjustment.

Fourth — To endeavor to make it possible for any person to obtain employment without being obliged to join a labor organization, and to encourage all such persons in their efforts to resist the compulsory methods of organized labor.

Fifth — To protect its members in such manner as may be deemed expedient and proper against Legislative, Municipal, and other Political encroachments.

ART. III. SEC. 1. The members of this Association may be persons, firms, corporations, or organizations of persons, firms, and corporations employing labor, and engaging more than five employees; and, provided, that no applicant for membership shall be admitted except as provided in the By-Laws.

SEC. 2. Each person, firm, corporation, or organization holding membership in the Association, shall designate one person to represent him or it in the Association, and the person so designated may be represented by proxy, provided such proxy is presented by a partner in a firm or an officer in any corporation or organization which may be a member of the Association, by consent of a majority of members present at any meeting.

SEC. 3. Each member shall be entitled to one vote as provided for in the By-Laws.

SEC. 4. Honorary members may be admitted when the By-Laws so provide.

ART. VI. SEC. 5. Not more than one member of any firm shall hold office or act as a member of any committee.

ART. VII. SEC. 1. All members of this Association shall make, execute, and acknowledge in writing, an agreement, in words and manner following, to wit: —

We (or I), the undersigned, being engaged in the business of ———, do hereby covenant and agree to and with each and every person, firm, or corporation composing the membership of The Employers Association, of Dayton, Ohio, as follows: —

First — In consideration of fair dealing, and the right to enjoy the privileges laid down by the Constitution of the United States, being cardinal principles of the Association, we (or I) pledge ourselves to use our best efforts to protect any of our fellow members who may require our support against any and all unjust demands, and to endeavor to settle all disputes or differences justly and amicably.

Second — We bind ourselves to obey the Constitution and By-Laws, and all proper rules made in conformity with the same, provided they do not conflict with the Constitution of the United States, nor with the laws of the State of Ohio.

By-Laws. Art. I. Each member of or participant in the Association, and each employee thereof, shall be required to subscribe to such form of oath as may be prescribed by the Association before being admitted to any of its meetings, except that such admission may be granted to any person upon consent of two thirds of the members present at any meeting.

Art. II. The consideration for services rendered the Association by any and all officers or members thereof, excepting the Secretary, however, shall be the benefits derived from membership in the Association, and no compensation shall be paid for any such services.

Art. VIII. Sec. 3. Any person, firm, or corporation engaged in a strike or lockout may make application for and be accepted as a probationary member, pending an examination of his case by the Strike Committee. If, in the judgment of the Strike Committee, after careful consideration, it is to the interests of the Association to advance a probationary member to full membership, the same may be done by a full vote of the Strike Committee.

Sec. 4. No member shall be entitled to the benefits of membership in the settlement of any difficulty which may arise between him and his workmen before he shall have been a member of the Association for a period of one month, except by the unanimous consent and approval of the Executive Committee.

Art. X. Sec. 3. When a member is engaged with a strike, or from any other cause is unable to obtain and hold other workmen in place of those on strike or previously employed by him, on account of interference on the part of any labor organization or their allies, the Strike Committee shall, when requested by such member, investigate the situation and may recommend to the Association, at a special meeting called for the purpose, if necessary, the offering of reward, in such form as may appear to be wise, to persons who shall remain in the employ of such member during the continuance of such difficulty.

SEC. 4. If a member shall take any action for the purpose of precipitating a strike or lockout without obtaining the approval and consent of the Strike and Executive Committees, such member shall not be entitled to the support of the Association pending settlement thereof.

SEC. 5. If a member shall settle a difference or strike involving a question of general interest to the Association, without first obtaining the approval and consent of the Strike and Executive Committees, then in such event such member shall repay to the Association all money which it may have paid out on account of said difference or strike, and the Association shall be relieved of all responsibility in the premises.

SEC. 6. Whenever the Executive Committee may deem it wise and proper to protect a member by wholly or partially compensating him for loss sustained through a strike or difficulty attributed to labor organizations, it shall make proper recommendation to the Association at a regular or called meeting thereof, and if such recommendation be approved by a two-thirds vote of the members present at such meeting, the amount of such compensation shall be paid them. Such compensation shall not, however, exceed $1.00 per day for each employee out, less such number of employees as may be employed in their places.

SEC. 7. At the request of a member directly interested, it shall be the duty of the Executive Committee, subject to the approval of the Association, to authorize, order, and conduct the prosecution of the leaders of mobs or persons threatening or doing injury to the property of the members, also those instrumental in establishing so-called boycotts against their production, and the expenses of such prosecutions shall be paid by the Association.

SEC. 8. When a demand is made on a member through a committee of any labor organization, said member shall be privileged to refer such committee to the Strike Committee of this Association, and once having done so he shall not thereafter negotiate a settlement of such demand without the consent and approval of a majority of said Strike Committee, which Committee shall appoint three members of the Association to take charge of the matter, and the members so appointed shall immediately proceed, in conjunction with the member on whom the demand is made, to effect a settlement, which settlement, if not satisfactory to the said member, shall be referred back to the Strike and Executive Committees for such action as they may deem best in the premises.

SEC. 9. When any member shall have a difficulty resulting from its compliance with the requirements of this Association, it may submit the matter to the Executive Committee, which shall take such action as may be equitable in accordance with the spirit of this Association.

Art. XVI. Sec. 1. The Secretary of this Association may provide each of its members with recommendation cards, which shall be provided by the Strike Committee, to be used for the purpose of recommending any employee who may be honorably discharged from, or who shall honorably quit, the employ of a member thereof.

Art. XVII. Sec. 1. All matters of politics relating to municipal and legislative affairs in so far as such matters may affect the object of this Association, shall be proper subjects for discussion at its meetings and action by its members, as such.

Sec. 2. It shall be the duty of each member of, or participant in, this Association to report thereto any political or legislative matter, as provided in Section 1 hereof, which may come to his notice.

Sec. 3. No political question, other than as provided in Section 1 hereof, shall be discussed at any of the meetings of this Association, except by a two thirds affirmative vote of all members present at the meeting at which such matter is introduced.

Art. XIX. Sec. 2. No member shall resign during the existence of a strike or pending the settlement of a difficulty between a member of this Association and his men.

The Citizens Industrial Association of America.

This body was organized October 30, 1903, at Chicago, and a constitution was adopted, from which these extracts are made: —

Art. I. This Association shall be known as "The Citizens Industrial Association of America," and shall be incorporated.

Art. II. Objects. First. — To assist, by all lawful and practical means, the properly constituted authorities of the State and nation in maintaining and defending the supremacy of the law and the rights of the citizen.

Second. — To assist all the people of America in resisting encroachments upon their constitutional rights.

Third. — To promote and encourage harmonious relations between employers and their employees upon a basis of equal justice to both.

Fourth. — To assist local, State, and national associations of manufacturers, employers, and employees, in their efforts to establish and maintain industrial peace, and to create and direct a public sentiment in opposition to all forms of violence, coercion, and intimidation.

Fifth. — To foster and encourage, by legitimate means, individual enterprise and freedom in management of industry, under which the people of the United States have made this the most successful and powerful nation of the world.

Sixth. — To establish a Bureau of Organization for the formation of associations favorable to the objects of this organization, and federating them with this Association.

Seventh. — To establish a Bureau of Education for the publication and distribution of literature tending to foster the objects of the Association.

Eighth. — To create and maintain a fund for such purposes, in harmony with and promotive of the objects of this Association, as shall approve themselves to the Executive Committee thereof.

ART. III. SEC. 1. Membership in this Association shall consist of national, State, or local organizations of persons, firms, corporations, or organizations which subscribe to the objects of this Association, as set forth in the Constitution and By-Laws.

ART. V. SEC. 1. The Association shall hold a convention each year, and special conventions may be called by the President at such times and places as the Executive Committee by unanimous vote, or by two thirds vote of its members upon the written request of at least 10 per cent. of the membership, may direct; and at such special conventions any officer may be deposed by a majority of the members present and voting.

ART. VII. SEC. 1. All members of this Association shall pay an initiation fee as follows: National trade organizations and State organizations, $100; local general organizations, $50; local trade organizations, $25. All members shall pay dues at the rate of 50 cents per annum per employing member, but in no case shall the amount be less than $10 nor greater than $200 per annum.

SEC. 3. The fiscal year of this Association shall begin on November 1 of each year.

SEC. 4. Representation in this Association for all purposes whatever shall be based upon the dues paid by any member. Each association shall be entitled to one vote for each $10 of annual dues, or major fractional part thereof: Provided, that no member shall send more than five delegates to any convention.

The Association at its first meeting passed these resolutions: —

Whereas, The strained relations between employer and employee are rapidly reducing the business conditions of the country into a state of chaos and anarchy, and the forces of socialism which are assuming control of the situation regard neither law nor the rights and the liberties of individuals, and

Whereas, The Constitution of the United States provides that "Congress shall have power to regulate commerce with foreign nations and among the several States," and further provides that "No person shall be deprived of life, liberty, or property without due process of law, nor shall private property be taken without just compensation," and therefore, be it

Resolved, That this convention demands that the officials, whether civic, State, or national, enforce the law of the land and see to it that

every man, woman, and child seeking to earn an honest livelihood shall be protected therein by the whole force of the State or of the nation, if it be necessary.

Resolved, therefore, That in carrying on a firm and uncompromising contest with the abuses of unions as now constituted and conducted, at the same time acknowledging the free right of workmen to combine, and admitting that their combination when rightfully constituted and conducted may prove highly useful, we earnestly desire to act, and believe we are acting, in the true interests of the workingmen themselves, for our welfare is inseparable from theirs and theirs from ours; we are essentially interdependent, each is indispensably necessary to the other; and those who stir up strife between us are enemies of mankind.

Resolved, That the Citizens Industrial Association of America is in earnest sympathy with every movement in the interest of labor. Believing that there can be no national prosperity where the working masses are ground down in hopeless poverty and ignorance, we hold, as happiest of all the results of the great industrial revolution achieved in the last half century, the greatly advanced and improved condition of the workingman at the present day.

The president of the Association is Mr. David M. Parry, of Indianapolis, who is also president of the National Association of Manufacturers; the secretary is Mr. A. C. Marshall, of Dayton, Ohio. The Executive Committee has since issued an "appeal for organization": it recommends that employers should organize by crafts in their respective communities, these craft organizations to be amalgamated into local organizations, which in turn shall affiliate with the national body. It passed resolutions in favor of the "protection of free labor" and of the establishment of a Labor Information Bureau for the use of the members of the Association. "It shall be one of the purposes of this bureau to keep a carefully tabulated record of all lawbreakers and undesirable workmen." Other resolutions denounced the eight-hour bill now pending in Congress, and the union label as "a form of discrimination, and in fact a species of the boycott."

The Association published December 15, 1903, a "List of Associations of Employers and Citizens," from which it appears that there were then 59 national associations (including the American Anti-Boycott Association), 66 district and State associations, and 461 local organizations (including numerous "Citizens' Alliances").

The Industrial Association will be judged in accordance with the record which it makes. It would have been better named if called "The National Association of Employers," with its membership confined strictly to employers of labor. Its weakest point is in its leadership. The president in his presidential address to the National Asso-

ciation of Manufacturers in April, 1903, declared that "this is not the proper time to talk conciliation . . . since the principles and demands of organized labor are absolutely untenable to those believing in the individualistic social order. [Mr. Parry considers Herbert Spencer "the last and the greatest of the intellects of the Victorian era."] Neither is it the time to talk arbitration or joint agreements." It is only too obvious that general statements concerning the entire right of workingmen to combine in trade-unions have little value when coming from persons holding such views concerning conciliation, arbitration, and joint agreement. Mr. Parry's "recognition" of the unions is as extreme in its practical nullity as Mr. Gompers' is in its practical universality. The organization of an Industrial Association is a step forward; the next step should be the retirement of its extremists to the rear, and the promotion to leadership of men of moderation, in touch with their time.

APPENDIX II

"OBSERVATIONS" OF THE ROYAL COMMISSION

(Pp. 116, 117, 119.)

We think that the extension of liberty to bodies of workmen or employers to acquire fuller legal personality than that which they at present possess is desirable in order to afford, when both parties wish it, the means of securing the observance, at least for fixed periods, of the collective agreements which are now, as a matter of fact, made between them in so many cases. The associations which might avail themselves of the liberty might in some cases be Trade Unions or Employers Associations, and in other cases bodies of workmen employed in a few establishments, or even a body employed in a single establishment, according to the circumstances of each industry. We do not suggest that a scheme of legally enforceable agreements would be applicable to the circumstances of all, or even, at present, of the larger part of the industries of this country. We find, however, from the evidence, that a considerable and very important part of British industry is conducted under collective agreements made in the most formal way between highly organized trade associations, and that the substitution of agreements between associations for agreements between individual employers and individual workmen is a growing practice, and one which is intimately connected with the mode and scale upon which modern industry is at present carried on. It seems to us to be clear from the evidence both of employers and employed that the advantages of this system greatly outweigh the disadvantages. This may not have been so evident at the date when the Trade Union Act of 1871 was passed, but it is attested by the growth of the system.

Such agreements are, in fact, the recognition of that virtual partnership between those who supply labour and those who supply managing ability, referred to in paragraph 365 of the Report, and are, therefore, on the whole, in accordance with the public interest and with the circumstances of modern industry. If this is the case, then it seems to follow that further legislation is desirable in order to bring the law into harmony with the present state of facts and public opinion.

We think that such an extension of liberty, if conceded (and in so far as it might be acted upon), would not only result in the better observance for definite periods of agreements with regard to wage-rates, hours of labour, apprenticeship rules, demarcation of work, profit-sharing and joint-insurance schemes, the undertaking of special works, and other matters, but would also afford a better basis for arbitration in industrial disputes than any which has yet been suggested.

In order to enable Trade Associations to enter into collective legally binding agreements, with the consequence that in case of breach of contract they would be liable to be sued for damages payable out of their collective funds, it would not be sufficient to repeal sub-section 4 of section 4 of the Act of 1871. Even if that legislative incapacity were taken away, the Trade Associations would be prevented by their want of legal personality from entering into such agreements or suing or being sued, except with regard to the management of their funds and real estate.

It would be necessary that they should acquire by some process of registration a corporate character sufficient for these purposes. We are anxious to make it clear that we propose nothing of a compulsory character, but that we merely desire that existing or future Trade Associations should have the liberty, if they desire it, of acquiring a larger legal personality and corporate character than that which they can at present possess. It must be added that even if Trade Associations were thus clothed with a legal personality, it would be open to them by express stipulation to provide that any special agreement between them should not be enforceable at law.

The further powers of incorporation would not be made a condition of the existing registration, but would be offered as powers to be obtained by registration under a new act. The motive which would, it might be hoped, influence Trade Associations so to register would be the desire to acquire power to enter into agreements of a more solid and binding kind than heretofore.

The evidence does not show that public opinion is as yet ripe for the changes in the legal status of Trade Associations which we have suggested; but we have thought it to be desirable to indicate what may, as it appears to us, ultimately prove to be the most natural and reasonable solution of some at least of the difficulties which have been brought to our notice.

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